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MARTIN'S

MINING LAW

AND

LAND-OFFICE PROCEDURE

WITH

STATUTES AND FORMS

BY

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(FORMERLY OF THE COLORADO BAR)

SAN FRANCISCO
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1908

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PREFACE.

In this work the author has endeavored to clearly and concisely state the law as it is to-day, and supports what may be found in this volume by quotations from and citing the latest decisions of the courts and the United States land department.

No effort has been made to make the work a treatise, but rather to state the law, and tell where it can be found.

By reason of his experience as an active practitioner, first in the great mining state of Colorado, and for many years in the mineral-producing commonwealth of California, the author hopes he has been able to produce a work which will be both acceptable and of practical value to the legal profession.

He believes that this is an opportune time to place in the hands of the active practitioner a work of this kind. Except the last edition of Mr. Morrison's valuable little work, and the recent appearance of Mr. Shamel's treatise upon Mining, Mineral, and Geological Law, devoted principally to the geological features, which he has treated in a most able manner, no work by an American author worthy of being called a text-book upon this subject has been offered to the profession for five years last past. This is a rapid age, and in the short period mentioned the courts of last resort in this country have established new precedents pertaining to this subject; and even during 1907 the legislatures of some of the Western states have amended their statutes pertaining to the location of mining claims, and during the last-mentioned period the new Secretary of the Interior, Hon. James A. Garfield, has approved quite a number of modifications in the rulings and regulations of the general land-office.

The appellate courts have decided and have passed upon some questions not adjudicated heretofore. Among the

latest, for instance, is a decision quoted in this work, deciding the much-debated question as to how a vein of non-metallic substance should be located, whether under the law governing lode locations or under the placer mining laws.

The author believes and hopes that the book will possess at least one merit, — that of being abreast of the times.

The author feels under obligation to the publishers for the care they have taken to make the mechanical features of the work as nearly perfect as seems possible.

THEODORE MARTIN.

LOS ANGELES, CALIFORNIA, June, 1908.

CONTENTS.

PART I.

GENERAL PRINCIPLES.

CHAPTER I.

INTRODUCTORY.

§ 1. The mine defined.
§ 2. Coal-mine.
§ 3. Mineral deposit defined.
§ 4. Minerals.
§ 5. Mineral lands defined.
§ 6. Mining-ground defined.
§ 7. Location.
§ 8. Kinds of location.
§ 9. "Mining claim" and "location" used interchangeably.
§ 10. Necessity of valid location.
§ 11. Effect of valid location.
§ 12. Actual possession need not be maintained.
§ 13. Lapse of time as affecting valid location.
§ 14. Location subject to railroad right of way.

CHAPTER II.

MINERS' RULES AND REGULATIONS.

§ 15. In general.
§ 16. Distinction between general custom and local regulation.
§ 17. Organization of mining districts.
§ 18. Legislative sanction of rules and regulations.
§ 19. Regularity of enactment.
§ 20. Subject-matter of rules and regulations.
§ 21. Requisites of rules and regulations.
§ 22. Must not conflict with statute laws.
§ 23. Must be complied with.
§ 24. Penalty for non-compliance.

§ 25. Proof of rules and regulations.
§ 26. Same. Presumption of continuance.
§ 27. Same. Best evidence.
§ 28. Same. Documentary evidence.
§ 29. Same. Parol evidence.
§ 30. Averment not necessary.
§ 31. Construction of rule or regulation.

CHAPTER III.

STATUTES.

§ 32. Federal statutes.
§ 33. Alaska statutes.
§ 34. State statutes.
§ 35. Same. Must be merely supplemental.
§ 36. Same. Must be complied with.

CHAPTER IV.

LANDS SUBJECT TO EXPLORATION AND APPROPRIATION.

§ 37. In general.
§ 38. States excepted from operation of Federal mining laws.
§ 39. Land must be unappropriated and unoccupied.
§ 40. "Unappropriated" and "unoccupied" defined.
§ 41. Lands not subject to appropriation at time of location.
§ 42. Using adjacent land for development purposes.
§ 43. Lands appropriated as non-mineral.
§ 44. Military reservations.
§ 45. Reservoir sites.
§ 46. Indian reservations.
§ 47. Railroad grants.
§ 48. Grants to states.
§ 49. Town sites.
§ 50. Mexican land grants.
§ 51. Tide-lands.
§ 52. Lands reclaimed by irrigation.

CHAPTER V.

LODE CLAIMS.

§ 53. In general.
§ 54. "Lode," "vein," "ledge," etc., synonymous.

§ 55. "Vein" or "lode" defined.
§ 56. Same. Various definitions stated.
§ 57. Same. Fissure to have form and be well defined.
§ 58. Same. "Ledge-matter."
§ 59. The "contact."
§ 60. "In place."
§ 61. Strike or course. "Along the vein."

CHAPTER VI.

PLACER CLAIMS.

§ 62. In general.
§ 63. Alum.
§ 64. Asphaltum.
§ 65. Borax.
§ 66. Brick-clay.
§ 67. Building-stone.
§ 68. Fire-clay.
§ 69. Marble. Marble deposits.
§ 70. Petroleum, natural gas, etc.
§ 71. Phosphate deposits.
§ 72. Salt-lands.
§ 73. Stone suitable for making lime.
§ 74. Timber in valuable quantities on land.

CHAPTER VII.

LODE AND PLACER CLAIMS WITHIN THE SAME AREA.

§ 75. In general.
§ 76. What constitutes known vein or lode.
§ 77. Same. Mere outcroppings.
§ 78. Same. Mere belief, not based upon discovery.
§ 79. Same. Location not necessary.
§ 80. Time at which vein must be known.

CHAPTER VIII.

TUNNEL SITES.

§ 81. In general.
§ 82. "Face of the tunnel" defined.
§ 83. "Line of the tunnel."
§ 84. Discovery of mineral.

§ 85. Size and extent of location.
§ 86. Marking boundaries.
§ 87. Right of tunnel-site owner and locator.
§ 88. Same. Blind leads.

CHAPTER IX.

MILL SITES.

§ 89. In general.
§ 90. Land must be non-mineral and non-contiguous.
§ 91. Ownership of mine not necessary.
§ 92. Must be used for mining or milling purposes.
§ 93. What constitute mining or milling purposes.
§ 94. Number of mill sites.
§ 95. Question of law and fact.

CHAPTER X.

WHO MAY MAKE LOCATION.

§ 96. In general.
§ 97. Aliens.
§ 98. Same. Alien may hold by transfer.
§ 99. Same. Inheritance by alien.
§ 100. Location by agent.
§ 101. Same. Ratification by principal.
§ 102. Same. Proof of ratification.
§ 103. Same. Estoppel of employee to assert interest in claim.
§ 104. Corporations.
§ 105. Infants.
§ 106. Employees of general land-office.

CHAPTER XI.

DISCOVERY.

§ 107. Necessity of discovery.
§ 108. Same. Placer claims.
§ 109. Same. Tunnel claims.
§ 110. Place of discovery.
§ 111. By whom discovery is to be made.
§ 112. Time of discovery with reference to location.
§ 113. Time to investigate discovery before location.

§ 114. What constitutes valid discovery.
§ 115. Same. Placer claim.
§ 116. Same. Sufficiency as affected by character of contesting claimants.
§ 117. Same. Question of fact.
§ 118. Same. Evidence.
§ 119. Discovery-shaft, or opening.
§ 120. Same. Equivalent of shaft.
§ 121. Same. Shaft must be sunk on unappropriated ground.
§ 122. Same. Time for sinking shaft.
§ 123. Discovery in discovery-shaft not necessary.
§ 124. Additional ground added through amended location.

CHAPTER XII.

EXTENT, SIZE, AND SHAPE OF MINING CLAIMS.

§ 125. In general.
§ 126. Tunnel claims.
§ 127. Placer claims.
§ 128. Effect of excessive size.
§ 129. Same. Reformation of lines.
§ 130. Shape of claim. Lode claims.
§ 131. Same. Placer claims.

CHAPTER XIII.

MARKING THE BOUNDARIES OF A MINING CLAIM.

§ 132. Necessity. In general.
§ 133. Same. Placer claims.
§ 134. Same. Tunnel claims.
§ 135. Time of marking.
§ 136. Mode and sufficiency of marking. Boundaries generally.
§ 137. Same. Monuments.
§ 138. Same. Stakes, posts, etc.
§ 139. Same. Conflicting corners.
§ 140. Same. Several locators.
§ 141. Same. Miners' rules and regulations.
§ 142. Same. Local statutes.
§ 143. Changing course of boundaries.
§ 144. Obliteration of markings.

CHAPTER XIV.

NOTICE OF LOCATION.

§ 145. Posting the notice. Generally.
§ 146. Same. Miners' rules and regulations.
§ 147. Same. State statutes.
§ 148. Contents and sufficiency of notice. Generally.
§ 149. Same. Reference to another mining claim.
§ 150. Same. Adopting monuments of previous location.
§ 151. Same. Course of lines controlled by the stakes.
§ 152. Same. Question of law or of fact.
§ 153. Location-notice liberally construed.
§ 154. Amendment of notice.

CHAPTER XV.

THE CERTIFICATE OF LOCATION, RECORDATION, ETC.

§ 155. In general.
§ 156. Distinction between location and recording.
§ 157. Local rules and regulations, and statutes.
§ 158. Time of making record.
§ 159. Same. Effect of failure to record within time.
§ 160. Verification.
§ 161. Same. Verification upon information and belief.
§ 162. Contents of the record.
§ 163. Same. Natural or permanent monuments.
§ 164. Same. State statutes.
§ 165. Same. Amendments.
§ 166. Effect of record as evidence.

CHAPTER XVI.

ASSESSMENT-WORK, ANNUAL LABOR, ETC.

§ 167. Source of requirements.
§ 168. Purpose of statute.
§ 169. Not necessary after entry.
§ 170. Time when work must be done.
§ 171. What constitutes labor or improvements.
§ 172. Same. Valuation of work or labor.
§ 173. Same. Work done outside of claim.
§ 174. Same. Several claims held in common.

§ 175. Same. Claims must be contiguous.
§ 176. Same. Oil claims.
§ 177. By whom work to be done.
§ 178. Excuse for not performing labor.
§ 179. Proof of labor.
§ 180. Not question for land department.
§ 181. Performance of labor. Issuance of patent.
§ 182. Co-owners.
§ 183. Same. Who is a co-owner.
§ 184. Same. Notice to co-owners.
§ 185. Same. Publication of notice to co-owners.
§ 186. Tunnel claims.

CHAPTER XVII.

ABANDONMENT.

§ 187. In general.
§ 188. Granting permission to enter and locate.

CHAPTER XVIII.

FORFEITURE.

§ 189. In general.
§ 190. Distinction between "forfeiture" and "abandonment."
§ 191. Failure to do necessary work.
§ 192. Resumption of work.
§ 193. Same. Relocation.
§ 194. Same. Burden of proof.

CHAPTER XIX.

RELOCATION.

§ 195. In general.
§ 196. Prior location must have been made.
§ 197. Ground must be open to relocation.
§ 198. Mode of relocation.
§ 199. New discovery not necessary.
§ 200. By whom relocation may be made.
§ 201. Same. By agent of original locator.
§ 202. Same. By co-owner.
§ 203. Same. By lessee.

§ 204. From what time relocation dates.
§ 205. When improvements pass by relocation.
§ 206. Improvements by prior locator not available to relocator as assessment.

CHAPTER XX.

PROCEEDINGS TO OBTAIN PATENT.

§ 207. Who may make application.
§ 208. Survey of the claim. Employment of surveyor.
§ 209. Same. Application for order for survey.
§ 210. Same. Signature to application.
§ 211. Same. Deposit for land-office fees.
§ 212. Same. Order for survey.
§ 213. Same. The actual survey.
§ 214. Same. Nature of improvements.
§ 215. Same. Approval of survey.
§ 216. Same. Certificate of surveyor-general.
§ 217. Posting notice and plat.
§ 218. The application for patent.
§ 219. Same. Abstract of title.
§ 220. Same. Publisher's agreement and publication.
§ 221. Same. Contents of notices.
§ 222. Same. Designation of newspaper.
§ 223. Same. Proof of citizenship.
§ 224. Same. Certificate of improvements.
§ 225. Same. Ground embraced in application.
§ 226. Same. Claim in two land districts.
§ 227. Same. Delay in prosecuting application.
§ 228. Application to purchase. Final entry.
§ 229. Same. Register's certificates.
§ 230. Proceedings for placer patents.
§ 231. Same. Number of locations unlimited.
§ 232. Same. Entry for single location must not exceed one hundred and sixty acres.
§ 233. Same. May embrace both placer and lode.
§ 234. Same. Included lodes.
§ 235. Same. Excluded lodes.
§ 236. Same. Surveys and boundaries.
§ 237. Same. Notice of application.
§ 238. Mill sites.
§ 239. Group of claims. Improvements.
§ 240. Applicant deceased. Heirs.
§ 241. Affidavits.

§ 242. Same. Where to be made.
§ 243. Same. Cannot be filed nunc pro tunc.
§ 244. Coal-lands.
§ 245. Saline-lands.
§ 246. Jurisdiction of the land department.
§ 247. Conclusiveness of decision by the department.

CHAPTER XXI.

PROTEST AND ADVERSE PROCEEDINGS.

§ 248. In general.
§ 249. Nature and purpose of protest.
§ 250. Same. Grounds for protest.
§ 251. Same. Standing of protestants.
§ 252. Same. Co-owners.
§ 253. Same. Sufficiency of affidavit.
§ 254. Nature and purpose of adverse claim.
§ 255. Who may adverse. Mill-site owner.
§ 256. Same. Placer claimant.
§ 257. Same. Tunnel-site owner.
§ 258. Same. Agricultural claimants.
§ 259. Same. Co-owners.
§ 260. Same. Heirs of claimant.
§ 261. Methods of settlement.
§ 262. When adverse claim must be filed.
§ 263. Same. Business hours.
§ 264. Same. Dormant application.
§ 265. Effect of failure to adverse.
§ 266. Same. No application to joint owner.
§ 267. Jurisdiction of courts. Generally.
§ 268. Same. State courts.
§ 269. Same. Subject-matter of jurisdiction.
§ 270. Same. Place.
§ 271. Same. Equity jurisdiction.
§ 272. Same. Removal from state to Federal court.
§ 273. Parties to adverse suits.
§ 274. Same. Heirs of deceased claimant.
§ 275. Commencement of adverse suit.
§ 276. Nature and form of action. Question involved.
§ 277. Same. Form determined by state practice.
§ 278. Same. Law or equity.
§ 279. Same. Pleadings and proofs.
§ 280. Same. Right to trial by jury.
§ 281. Establishment of right or title. Title of each party in question.

§ 282. Same. Priority.
§ 283. Same. Title in neither party.
§ 284. Same. Indian reservation.
§ 285. Reasonable diligence in prosecution. No exception to rule.
§ 286. Judgment. Ground affected.
§ 287. Same. Findings by court.
§ 288. Same. Effect of judgment.
§ 289. Proceedings after judgment.
§ 290. Adverse claim must be verified within the land district.
§ 291. Dismissal of adverse proceedings.
§ 292. Adverse claimant's application.
§ 293. Conclusiveness of findings by state court.

CHAPTER XXII.

EFFECT AND OPERATION OF PATENT.

§ 294. In general.
§ 295. Rights of applicant for patent.
§ 296. Patent conveys the surface and subsurface.
§ 297. Distinction between lode claim and placer claim patents.
§ 298. Reservations and restrictions.
§ 299. Reforming patent.
§ 300. Conclusiveness of patent as against direct attack.
§ 301. Cannot be attacked collaterally.
§ 302. Character of land.
§ 303. Regularity of proceedings in land-office.
§ 304. Citizenship of patentee.
§ 305. Jurisdiction of land-office.

CHAPTER XXIII.

MINES AND MINING CLAIMS AS PROPERTY.

§ 306. Nature of property in general.
§ 307. Possessory rights.
§ 308. Fixtures.
§ 309. Transfers of mining claims.
§ 310. Dower rights.
§ 311. Transfer by corporations.
§ 312. Sheriff's sale.
§ 313. Requisites of transfer.
§ 314. Construction and operation of transfer.
§ 315. Estoppel to deny validity of location.

CHAPTER XXIV.

MINING RIGHTS GENERALLY.

§ 316. In general.
§ 317. Lode locations.
§ 318. Placer locations.

CHAPTER XXV.

FOLLOWING THE VEIN ON ITS COURSE OR STRIKE.

§ 319. Cannot go beyond limits of claim.

CHAPTER XXVI.

FOLLOWING LODE OR VEIN ON ITS DIP.

§ 320. General rule under act of 1866.
§ 321. General rule under act of 1872.
§ 322. Following vein on its dip into adjoining agricultural land.
§ 323. What constitutes apex.
§ 324. Identity or continuity of vein or lode.
§ 325. Test of continuity.
§ 326. Boundary lines as determining extralateral rights.
§ 327. Priority of location determines right in case of conflicting boundaries.
§ 328. Projecting lines across senior location.
§ 329. Fixing lines by agreement.
§ 330. Side lines.
§ 331. Side lines becoming end lines.
§ 332. Parallelism of end lines. Location under act of 1866.
§ 333. Same. Location under act of 1872.
§ 334. End lines must be straight lines.
§ 335. End lines not at right angles with side lines.
§ 336. End lines as fixed by conveyance.
§ 337. Vein crossing end line and departing through side line.
§ 338. Vein departing and entering same side line.
§ 339. Vein abruptly terminating before reaching end line.
§ 340. Vein lying along common side line.
§ 341. Vein other than discovery-vein.
§ 342. Vein having apex outside of boundaries.
§ 343. No right to tunnel.
§ 344. Establishment of extralateral rights.
§ 345. Patentee. Rights of.

CHAPTER XXVII.

CROSSING OR INTERSECTING VEINS OR LODES.

§ 346. In general.
§ 347. Construction of phrase "space of intersection."
§ 348. Wilhelm v. Silvester.
§ 349. Calhoun Gold Mining Company v. Ajax Gold Mining Company.

CHAPTER XXVIII.

UNITING VEINS.

§ 350. In general.
§ 351. Necessity of adverse proceedings.

CHAPTER XXIX.

TOWN SITES.

§ 352. In general.
§ 353. Mode of establishing town sites. Scripping.
§ 354. Same. Under Federal statutes.
§ 355. Same. Surveying reservation into lots.
§ 356. Same. Filing plat of town site.
§ 357. Same. Extension of limits.
§ 358. Same. Entry by town authorities in trust for occupants.
§ 359. Same. Preference.
§ 360. Same. Entry under next preceding section.
§ 361. Same. Entry in proportion to number of inhabitants.
§ 362. Same. Conformity to legal subdivisions.
§ 363. Same. Alaska.
§ 364. Rights of mineral claimants.
§ 365. Same. Two classes of mining claims distinguished.
§ 366. Same. "Mine."
§ 367. Same. Future discovery.
§ 368. Same. "Valid mining claim or possession."
§ 369. Adverse claims and suits between town-site and mineral claimants.

CHAPTER XXX.

EMINENT DOMAIN.

§ 370. Conflict of authorities.
§ 371. Statutes declaring mining public use.
§ 372. Same. In Utah.
§ 373. Same. In Nevada.
§ 374. Same. In California.
§ 375. Same. In Arizona.
§ 376. Same. In Colorado.

CHAPTER XXXI.

GRUB-STAKE OR PROSPECTING CONTRACTS.

§ 377. Are peculiar to mining countries.
§ 378. Not necessarily in writing.
§ 379. Consideration.
§ 380. Enforceable, same as other contracts.
§ 381. Tenants in common.
§ 382. Qualified partnerships.
§ 383. Parties are trustees for each other.
§ 384. One partner may not locate for his own benefit a discovery made during life of contract.
§ 385. Must use reasonable diligence in prospecting.
§ 386. When no time limit fixed.
§ 387. Dissolve by mutual consent.
§ 388. Cannot claim interest if unable to carry out contract.
§ 389. Liability for debts.
§ 390. Resulting trust.

CHAPTER XXXII.

MINING PARTNERSHIPS.

§ 391. Nature of mining partnership.
§ 392. Differ from ordinary partnerships.
§ 393. Member may deal with partnership for his own benefit.
§ 394. Stranger may be admitted without dissolving.
§ 395. When partnership exists.
§ 396. Powers of members limited.

CHAPTER XXXIII.

ESTATES OF DECEASED OR INCOMPETENT MINERS AND INFANTS.

§ 397. Summary proceedings to sell.
§ 398. Same. Mode of.
§ 399. Same. Optional contracts to sell.
§ 400. Same. Proceedings not subject to usual probate laws.

CHAPTER XXXIV.

PARTITION.

§ 401. Mining claims may be partitioned.
§ 402. Same. Lode claims.
§ 403. Same. Character of title does not affect.
§ 404. Same. Agreement not to partition null.

CHAPTER XXXV.

MISCELLANEOUS.

§ 405. California débris commission.
§ 406. Mechanics' liens.
§ 407. Hawaiian Islands.
§ 408. Philippine Islands.
§ 409. Porto Rico.

PART II.

STATUTES. UNITED STATES LAND-OFFICE RULES AND REGULATIONS, FEES, RULES OF PRACTICE.

CHAPTER I.

FEDERAL STATUTES. GENERALLY.

§ 410. Mineral lands reserved.
§ 411. Mineral lands open to purchase by citizens.
§ 412. Length of mining claims upon veins or lodes.
§ 413. Proof of citizenship.
§ 414. Affidavit of citizenship, before whom made.
§ 415. Locators' rights of possession and enjoyment.
§ 416. Owners of tunnels, rights of.
§ 417. Regulations made by miners.
§ 418. Assessment required for oil claims.
§ 419. Expenditure of money on tunnels.
§ 420. Soldiers and sailors in war with Spain relieved from assessment-work.
§ 421. Notice of enlistment to be given.
§ 422. Co-owners of claims not relieved from proportion of work.
§ 423. Patents for mineral lands. How obtained.
§ 424. Adverse claim. Proceedings on.
§ 425. Same. Findings by jury. Costs.
§ 426. Same. Oath of claimant. Before whom made.
§ 427. Description of vein or lode claims on surveyed and unsurveyed lands.
§ 428. Pending applications. Existing rights.
§ 429. Conformity of placer claims to surveys. Limit of.
§ 430. Subdivisions of ten-acre tracts. Maximum of placer locations.
§ 431. Conformity of placer claims to surveys. Limitation of claims.
§ 432. What evidence of possession, etc., to establish a right to a patent.
§ 433. Proceedings for patent for placer claims, etc.
§ 434. Entry of building-stone lands under placer mining laws.
§ 435. Entry of petroleum or other mineral-oil lands under placer mining laws.
§ 436. Saline-lands. To be located as placer claims, but limiting one location for each person.
§ 437. Same. Utah owns salt-lands within the state.
§ 438. Surveyor-general to appoint surveyors of mining claims, etc.
§ 439. Verification of affidavits, etc.
§ 440. Where veins intersect, etc.

§ 441. Patents for non-mineral lands, etc. Mill sites.
§ 442. What condition of sale may be made by local legislature.
§ 443. Vested rights to use of water for mining, etc. Right of way for canals.
§ 444. Patents, pre-emptions, and homesteads subject to vested and accrued water rights.
§ 445. Mineral lands in which no valuable mines are discovered, open to homesteads.
§ 446. Mineral lands, how set apart as agricultural lands.
§ 447. Additional land districts and officers. Power of the President to provide.
§ 448. Provisions of the statute not to affect certain rights.
§ 449. Mineral lands in certain states excepted.
§ 450. Mineral lands in Missouri and Kansas. Disposal of, as agricultural lands.
§ 451. Mineral lands in Alabama. Disposal of, as agricultural lands.
§ 452. Grants of lands to states or corporations not to include mineral lands.
§ 453. Indian reservations.
§ 454. United States statutes for the acquirement of coal-lands. Entry of coal-lands.
§ 455. Pre-emption of coal-lands.
§ 456. Pre-emption claims of coal-lands to be presented within sixty days, etc.
§ 457. Only one entry allowed.
§ 458. Conflicting claims.
§ 459. Rights reserved.
§ 460. Town sites on mineral lands authorized. Restriction.
§ 461. Reservoir sites located.
§ 462. Lands located and entered under mineral-land laws not included in amount limited.
§ 463. Forest reservations. When to be established.
§ 464. Use of timber, etc., by settlers, etc.
§ 465. Egress and ingress of settlers within reservations, etc.
§ 466. Restoration of mineral or agricultural lands to public domain.
§ 467. Control of forest reserves transferred to Agricultural Department.
§ 468. Defining jurisdiction of Department of the Interior and Department of Agriculture within forest reserves.
§ 469. Removal of timber.
§ 470. Citizens of Colorado, Nevada, and the territories authorized to fell and remove timber on public domain for mining and domestic purposes.
§ 471. Duty of register and receiver.
§ 472. Punishment for violation of act.
§ 473. Timber-cutting.
§ 474. Timber may be cut for smelting purposes.

§ 475. Water rights granted for mining, etc., purposes. Regulations. Forest reserves.
§ 476. Sale of timber and stone lands.
§ 477. Application for purchase. Penalty for false swearing, etc.
§ 478. Publication of application. Proofs. Entry and patent. Objections.
§ 479. Building-stone lands.
§ 480. Timber and stone lands.
§ 481. Reservations in patents for right of way for ditches.
§ 482. Bankruptcy applies to mining as well as to other corporations.
§ 483. Limitations of suits to annul patents.

CHAPTER II.

FEDERAL STATUTES. ALASKA.

§ 484. Mining rights in Alaska granted to native-born citizens of the Dominion of Canada.
§ 485. Mining laws extended to the district of Alaska.
§ 486. An act making further provisions for a civil government for Alaska, and for other purposes. District divided into three recording divisions.
§ 487. Recording districts.
§ 488. Same. Recorder.
§ 489. Same. Change of district, etc.
§ 490. What to be recorded.
§ 491. Where instruments recorded.
§ 492. Miners may make rules for district when.
§ 493. Occupants of school or mission lands not to be disturbed. Missionary stations.
§ 494. Mining laws.
§ 495. Annual improvements, etc., required on mining claims. Filing affidavits. Contents. Prima facie evidence of performance of work, etc. Forfeiture. Officer before whom affidavits may be made. Time of filing.
§ 496. Same. Fee.
§ 497. Additional land districts. Nome and Fairbanks districts, Alaska, created.
§ 498. Registers and receivers. Clerks of court and marshals to act.
§ 499. Fees, etc. Surplus. No other salary.
§ 500. Surveys. Approval.
§ 501. In effect when.
§ 502. Coal-lands in Alaska.
§ 503. Same. Who to receive patents.
§ 504. Same. Adverse claims.
§ 505. Repeal of conflicting laws.

CHAPTER III.

FEDERAL STATUTES. CALIFORNIA DÉBRIS COMMISSION.

§ 506. California débris commission, relative to hydraulic mining. Appointment of commission. Authority and powers.
§ 507. Organization. Compensation. Rules of procedure.
§ 508. Jurisdiction over hydraulic mining. Injurious mining prohibited.
§ 509. Duties of commission.
§ 510. Surveys for débris reservoirs. Study of methods.
§ 511. Noting effects on navigable channels.
§ 512. Annual reports.
§ 513. Terms defined.
§ 514. Petitions for mining to be filed.
§ 515. Surrender to United States of right to regulate débris. Other processes not affected.
§ 516. Joint petition by mining-claim owners requiring a common dumping-ground.
§ 517. Publication of petition. Examinations. Hearings.
§ 518. Favorable decisions within thirty days. Order directing methods of mining, etc. Taxes on gross proceeds. Expenses. Hydraulic mining without impounding-works, etc. No tax on gross proceeds to be collected.
§ 519. Submission of plans, and work thereunder. Permission to commence mining.
§ 520. Conditions as to commencing operations.
§ 521. Allotment of expenses for common dumping-ground among mine-owners.
§ 522. Limit of débris washed away.
§ 523. Commission may reduce or revoke authority.
§ 524. Penalty for violating conditions.
§ 525. Examination of mines. Report.
§ 526. Use of public lands and material. Withdrawal from sale and entry.
§ 527. Wilful injury to works. Violations injuring navigation. Penalty.
§ 528. Tax on gross proceeds of hydraulic mines. "Débris fund" created. Advances from mine-owners.
§ 529. Consultation with state engineers.
§ 530. Restraining-dams and settling-reservoirs. To be built from special appropriations or débris fund.
§ 531. Contracts may be made, half to be paid by state of California.
§ 532. Payments for work. How to be made.
§ 533. Secretary of War may undertake what.
§ 534. Mileage in lieu of traveling expenses.

CHAPTER IV.

FEDERAL STATUTES. PHILIPPINE ISLANDS.

§ 535. Mineral lands. Measurements reduced to metric system. Dollars to pesos.
§ 536. Disposal.
§ 537. Purchase, etc., by citizens. Minerals on unpatented agricultural lands.
§ 538. Locating of mineral claims. Regulations.
§ 539. Demarcation of claims.
§ 540. Marking lines of claims. Surveys.
§ 541. Removal of posts unlawful.
§ 542. Location lines.
§ 543. Restrictions. Prior claims not prejudiced.
§ 544. Claims of full size. Application and affidavit.
§ 545. Fractional claims. Declaration. Description. Sketch-plan. Innocent non-compliance with regulations.
§ 546. Difficult demarcations.
§ 547. Recording claims.
§ 548. Disputes.
§ 549. Limit of claims.
§ 550. Abandonment.
§ 551. Proofs of citizenship.
§ 552. Mining regulations. Annual labor or improvements. Relocation on non-compliance with regulations. Delinquent part-owners.
§ 553. Patents. How obtained.
§ 554. Oath, etc., of non-resident applicants.
§ 555. Adverse claims. Proceedings and determination.
§ 556. Claims upon surveyed lands. On unsurveyed lands.
§ 557. Building-stone entries.
§ 558. Petroleum, etc., entries.
§ 559. Placer claims. Limit.
§ 560. Placer claims on surveyed lands.
§ 561. Establishment of right to patent. Prior liens.
§ 562. Appointment of deputy surveyors. Expenses. Charges for surveys.
§ 563. Verification of affidavits. Testimony, etc. Contests.
§ 564. Patents of non-mineral lands, etc., for milling, etc. Mill-site patents.
§ 565. Rules for mines, etc. Bonds of deputy mineral surveyors.
§ 566. Protection to vested water rights. Damages.
§ 567. Patents subject to vested water rights.
§ 568. Establishment of land districts, etc.
§ 569. Coal-land entries.

§ 570. Preference right of entry of coal-lands.
§ 571. Declaratory statement in such case.
§ 572. Limit to entries to coal-lands. Saline-lands.
§ 573. Conflicting claims to coal-lands.
§ 574. Saline-lands. Auction and private sales.
§ 575. Mineral lands reserved from grants for public works.
§ 576. Prior mining concessions not affected.
§ 577. Future mining rights.
§ 578. Cancelation of perfected Spanish concessions.

CHAPTER V.

UNITED STATES LAND-OFFICE RULES AND REGULATIONS.

PART I. RULES AND REGULATIONS, INCLUDING AMENDMENTS.

§ 579. Nature and extent of mining claims.
§ 580. Lode claims.
§ 581. Tunnels.
§ 582. Placer claims.
§ 583. Same. Amendments to rules (paragraphs 22, 23, and 24).
§ 584. Same. Placer claims (continued).
§ 585. Regulations under saline act.
§ 586. Procedure to obtain patent to mineral lands. Lode claims.
§ 587. Same. Amendments to rules.
§ 588. Same. Lode claims (continued).
§ 589. Same. Placer claims.
§ 590. Same. Mill sites.
§ 591. Same. Citizenship.
§ 592. Same. Necessity of proper proofs.
§ 593. Possessory right.
§ 594. Adverse claims.
§ 595. Appointment of deputies for survey of mining claims. Charges for surveys and publications. Fees of registers and receivers, etc.
§ 596. Hearing to determine character of lands.
§ 597. District of Alaska.
§ 598. Mineral lands within forest reserves.
§ 599. Surveys of mining claims. General provisions.
§ 600. Same. Survey, how made.
§ 601. Same. Amendment to rules.
§ 602. Same. Survey, how made (continued).

PART II. RULES AND REGULATIONS OF LAND DEPARTMENT CONCERNING COAL-LANDS.

§ 603. Coal-lands and regulations. Generally.
§ 604. Same. Coal-lands in Alaska.
§ 605. Same. Instructions to register and receiver, Juneau, Alaska.
§ 606. Same. Supplemental regulations. Instructions to registers and receivers. Coal-lands.
§ 607. Same. Lands not "coal-lands."
§ 608. Same. Action required by special agents.
§ 609. Same. Supplemental regulations. [Additional.]
§ 610. Same. Coal-lands. Mineral.
§ 611. Same. Application to purchase coal-land.
§ 612. Same. Coal-land. Affidavit.

PART III. RECOGNITION OF AGENTS AND ATTORNEYS BEFORE DISTRICT LAND-OFFICES.

§ 613. Regulations.

CHAPTER VI.

SURVEYS. CIRCULAR TO APPLICANTS.

§ 614. Requirements in conduct of business.
§ 615. Fees and charges for office-work and stationery in connection with survey of mining claims.

CHAPTER VII.

FEES OF REGISTERS AND RECEIVERS AND SURVEYORS-GENERAL.

§ 616. Declaratory statements.
§ 617. Mineral applications and adverse claims.
§ 618. Timber and stone land applications.
§ 619. Reducing testimony to writing.
§ 620. Transcripts from records.
§ 621. Record information.
§ 622. Plats and diagrams (registers and receivers of all districts are also authorized to furnish plats, diagrams, etc.).
§ 623. Fees of surveyors-general. Certified copies of plats and records.

CHAPTER VIII.

RULES OF PRACTICE BEFORE DISTRICT LAND-OFFICES, GENERAL LAND-OFFICE, AND DEPARTMENT OF THE INTERIOR.

§ 624. Proceedings before registers and receivers. 1. Initiation of contests.
§ 625. Same. 2. Hearings in contested cases.
§ 626. Same. 3. Notice of contest.
§ 627. Same. How transferees and encumbrancers may entitle themselves to notice of contest or other proceedings.
§ 628. Same. 4. Service of notice.
§ 629. Same. 5. Notice by publication.
§ 630. Same. 6. Proof of service of notice.
§ 631. Same. 7. Notice of proceedings.
§ 632. Same. 8. Rehearings.
§ 633. Same. 9. Continuances.
§ 634. Same. 10. Depositions on interrogatories.
§ 635. Same. 11. Oral testimony before officers, other than registers and receivers.
§ 636. Same. 12. Trials.
§ 637. Same. 13. Appeals.
§ 638. Same. 14. Reports and opinions.
§ 639. Same. 15. Taxation of costs.
§ 640. Same. 16. Appeals from decisions rejecting applications to enter public lands.
§ 641. Proceedings before surveyors-general.
§ 642. Proceedings before the commissioner of the general land-office and Secretary of the Interior. 1. Examination and argument.
§ 643. Same. 2. Rehearing and review.
§ 644. Same. 3. Appeal from the commissioner to the Secretary of the Interior.
§ 645. Same. 4. Attorneys.
§ 646. Same. 5. Decisions.
§ 647. Writ of certiorari. Petition should contain copy of decision complained of.
§ 648. Practice. Appeal. Certiorari.
§ 649. Regulations governing the recognition of agents and attorneys before district land-officers.
§ 650. Laws and regulations governing the recognition of agents, attorneys, and other persons to represent claimants before the Department of the Interior and the bureaus thereof. 1. Laws.
§ 651. Same. 2. Regulations.

§ 652. Compulsory attendance of witnesses. Under act of January 31, 1903. Circular of the Department of the Interior, March 20, 1903.
§ 653. Same. Amendments to circular.

CHAPTER IX.

STATE AND TERRITORIAL STATUTES. ARIZONA.

Mining Laws.

§ 654. Who may make location.
§ 655. Marking boundaries.
§ 656. What notice of location must contain.
§ 657. Statute must be complied with.
§ 658. Time to record copy of location-notice.
§ 659. Time to sink discovery-shaft.
§ 660. Time allowed to monument claim.
§ 661. Failure to comply with statute forfeits claim.
§ 662. Manner of marking surface boundaries.
§ 663. Equivalent of discovery-shaft.
§ 664. Amendment of notice of location.
§ 665. Assessment-work.
§ 666. Affidavit of assessment-work.
§ 667. Form of affidavit of assessment-work.
§ 668. Location of abandoned claim.
§ 669. Manner of locating placer claim.
§ 670. Placer claims. How monuments must be placed.
§ 671. Recording notice of location.
§ 672. Forfeiture of interest of co-owner.
§ 673. Record of forfeiture as evidence.
§ 674. Acknowledgment of contribution by delinquent co-owners.
§ 675. Penalty for failure to acknowledge contribution.
§ 676. Affidavits by third persons.

CHAPTER X.

STATE AND TERRITORIAL STATUTES. ARIZONA (CONTINUED).

General Corporation Laws.

§ 677. Introduction. Incorporating in Western states.
§ 678. Formation of private corporations. Text of Arizona statutes.
§ 679. Same. Fees to resident agent.

§ 680. Same. Articles of incorporation, etc., to be filed. Duty of officers.
§ 681. Same. By-laws may provide for sale of shares upon failure to pay subscription.

CHAPTER XI.

STATE AND TERRITORIAL STATUTES. CALIFORNIA.

Mining Laws.

§ 682. Mining. Rights of way. Proof of annual labor. Forfeiture for non-performance of work. Working. Easement. Drainage.
§ 683. Mining claims. Abandoned. Fencing or covering abandoned shafts.
§ 684. Mining-bell signals.
§ 685. Same. Rules for enforcing.
§ 686. Protection of workmen.

CHAPTER XII.

STATE AND TERRITORIAL STATUTES. CALIFORNIA (CONTINUED).

General Corporation Laws.

§ 687. What articles must contain. And how executed.
§ 688. Subscription to articles.
§ 689. Where filed and recorded. Domestic corporations.
§ 690. Fees of secretary of state.
§ 691. By-laws.
§ 692. Filing articles in other counties.
§ 693. Directors.
§ 694. Elections by ballot. Cumulative voting.
§ 695. Foreign corporations must pay same fees as domestic.
§ 696. Foreign corporations must designate agent.
§ 697. Same. Must file certified copy of articles.
§ 698. Same. Penalty for failure to file.
§ 699. Certificates of stock. How issued.
§ 700. Mining corporations. Protection of stockholders.
§ 701. Transfer agencies. May establish in other states.
§ 702. Stock issued at transfer agencies. Surrender of certificate.
§ 703. Consolidation of mining corporations. Written consent of stockholders.
§ 704. Same. Certificate of consolidation. Filed where.
§ 705. Same. To be signed by boards. Calling meeting of stockholders. Notice.

§ 706. Books and balance-sheets to be kept by secretary. Stockholders' right to inspect.
§ 707. Stockholder may examine mining property.
§ 708. Monthly balance-sheet. Verified by oath of whom.
§ 709. Superintendent to file monthly account. What must show.
§ 710. Same. Report attached to account. Open to inspection.
§ 711. Right to inspect books and records. Absolute right.
§ 712. Reason or occasion for examination.
§ 713. Right of stockholder to visit mine with expert. Duty of superintendent.
§ 714. Failure of superintendent to obey orders. Removal.
§ 715. Liability of president and directors. Refusal to permit examination. Damages.
§ 716. Removal of directors.
§ 717. Must pay annual license tax.
§ 718. License tax for part of year.

CHAPTER XIII.

STATE AND TERRITORIAL STATUTES. COLORADO.

§ 719. Posting notice of location of placer claim.
§ 720. Marking boundaries of placer claim.
§ 721. Recording location-certificate of placer claim. Time.
§ 722. What location-certificate of placer claim must state.
§ 723. Right of way for water to lode claim.
§ 724. Tunnel claim must be recorded. What record must show.
§ 725. Tunnel claims. Two hundred and fifty feet on each side. Right of way.
§ 726. May tunnel through claims.
§ 727. Purpose of tunnel. Inspection.
§ 728. Ore extracted property of owners. Damages.
§ 729. Burden of proof.
§ 730. Lode claims. Lodes crossing or uniting. Rights of parties.
§ 731. Same. Length of.
§ 732. Same. Width of. Exceptions.
§ 733. Same. Three months allowed to record location-certificate.
§ 734. Same. What location-certificate shall contain.
§ 735. Same. Location-certificate void when.
§ 736. Same. Manner of location. Discovery-shaft.
§ 737. Same. Manner of locating. Posting notice of location.
§ 738. Same. Marking boundaries.
§ 739. Same. Manner of marking boundaries.
§ 740. Same. Open crosscut, tunnel, or adit will hold lode.
§ 741. Same. Sixty days allowed to sink discovery-shaft.

§ 742. Same. What location includes. Apex. End lines. Side lines.
§ 743. Same. Apex cannot follow trend beyond exterior lines.
§ 744. Same. Right of way for ditch, flume, etc. Parol license.
§ 745. Affidavit of annual labor.
§ 746. Form of affidavit of annual labor.
§ 747. Amendatory or additional certificate.
§ 748. Relocation of abandoned lode.
§ 749. Certificate of location shall contain but one location.
§ 750. Actions involving title or right of possession to mining claim. Survey by order of court, and the proceedings therefor.
§ 751. Value of ore, and damages.
§ 752. Partition of mining claims.

CHAPTER XIV.

STATE AND TERRITORIAL STATUTES. IDAHO.

§ 753. Who may take and hold mining claims.
§ 754. Width of claim, etc.
§ 755. Notice of location. Monument at point of discovery.
§ 756. Marking boundaries of lode claim.
§ 757. Necessity of discovery-shaft, and time when must be sunk.
§ 758. Relocation.
§ 759. Recording notice of location.
§ 760. Relocation of abandoned claim.
§ 761. Notice must claim but one location.
§ 762. Placer claims. Marking boundaries.
§ 763. Same. Notice of location.
§ 764. Same. Development excavation.
§ 765. Same. Record of location.
§ 766. Affidavit accompanying filing of notice.
§ 767. Proof of annual labor. Contents of affidavit. Effect of, as evidence.
§ 768. Amended locations.
§ 769. Deputy mining recorder.
§ 770. Same. Duty to transmit notices to recorder.
§ 771. Same. Other duties of.
§ 772. When right to mine is separate from ownership of surface.

CHAPTER XV.

STATE AND TERRITORIAL STATUTES. MONTANA.

§ 773. Mining claims. Discovery and location.
§ 774. Notice of location posted. What to contain.

§ 775. Boundaries of claim. When and how marked.
§ 776. Sufficiency of other monuments question of fact.
§ 777. Discovery-shaft. To sink within sixty days of posting.
§ 778. Notice of location.
§ 779. Contents.
§ 780. Verification.
§ 781. Mill sites.
§ 782. Relocation of abandoned claims.
§ 783. Rights of a relocator.
§ 784. Amended locations.
§ 785. Relocations.
§ 786. Previous rights not waived by relocation.
§ 787. Third persons' rights. Not to be interfered with by relocation.
§ 788. Locations heretofore made valid.
§ 789. Time prescribed not mandatory.
§ 790. United States patent. Proof of compliance with state laws.
§ 791. Repealing clause.
§ 792. When act takes effect.
§ 793. Certificate of survey.
§ 794. Eminent domain. Public uses. Mines, mills, and smelters.

CHAPTER XVI.

STATE AND TERRITORIAL STATUTES. NEVADA.

Mining Laws.

§ 795. Who may be locator. What notice must contain.
§ 796. Location-work. What constitutes. Boundaries defined how.
§ 797. Location-notice to be recorded. What notice must contain. Record not containing foregoing items void.
§ 798. What location includes.
§ 799. Lode claim. Apex cannot follow trend beyond exterior lines.
§ 800. Defective certificates. Relocation. Amendatory or additional certificates.
§ 801. Relocation of abandoned lode claims.
§ 802. Survey and certificate of surveyor becomes part of record.
§ 803. Amount of assessment-work.
§ 804. Affidavit of work performed.
§ 805. Co-owners. Notice to delinquents. Penalty.
§ 806. Notice or certificate of location to contain but one location.
§ 807. Placer claims. Location. Marking boundaries.
§ 808. Same. Work to be performed.
§ 809. Same. What location-certificate must contain.
§ 810. Same. Recording location-certificate.
§ 811. Mill site.

§ 812. Same. What notice of location must contain.
§ 813. Same. Marking boundaries.
§ 814. Same. Record of location.
§ 815. Same. When location is void.
§ 816. Tunnel right. How located.
§ 817. Same. Establishment of boundary lines.
§ 818. Same. Recording.
§ 819. Same. Blind lodes or veins.
§ 820. Certificates of location or labor need not be sworn to.
§ 821. Certificates to be recorded with county recorder in all cases.
§ 822. Salt-lands.
§ 823. Same. Survey of salt-lands. Location.
§ 824. Same. When subject to relocation.
§ 825. County recorder to be ex officio district mining recorder.
§ 826. Duties of mining recorders.
§ 827. Fees of recorders.
§ 828. Duty of mining recorders. Duplicate notices.
§ 829. Fees to be collected by district mining recorders for duplicat notices.
§ 830. Duplicate notices to be filed with county recorder.
§ 831. Fees for recording duplicate notices.
§ 832. Recorder to give locator receipt.
§ 833. Receipt prima facie evidence.
§ 834. Mining recorder's seal.
§ 835. Mining recorders notified by county recorders.
§ 836. Same. Penalty.
§ 837. Land granted to and selected by the state. Exploration an appropriation.
§ 838. State disclaiming interest in mineral lands.
§ 839. Prospector may enter on private land.
§ 840. May locate mineral deposit. How.
§ 841. Method of proceeding prescribed.
§ 842. Title. How acquired.
§ 843. Basis for determining value.
§ 844. False dating of location-notices forbidden.
§ 845. Same. Penalty for false dating.
§ 846. Grub-stake contracts to be recorded.

CHAPTER XVII.

STATE AND TERRITORIAL STATUTES. NEVADA (CON TINUED).

GENERAL CORPORATION LAWS.

§ 847. Introductory.
§ 848. Purposes for which corporations may be formed.

§ 849. Companies operating out of the state.
§ 850. Formation of corporation. How accomplished.
§ 851. What articles or certificate shall set forth.
§ 852. When corporate existence begins.
§ 853. Evidence of incorporation.
§ 854. Powers.
§ 855. Banking powers denied.
§ 856. Additional powers.
§ 857. Preferred and other special stocks.
§ 858. Rights may be given creditors to vote, or inspect books, etc.
§ 859. First meeting.
§ 860. First meeting for election of directors, etc.
§ 861. Meeting of stockholders, and principal office.
§ 862. Banks and corporations may act as resident agents.
§ 863. Name to be conspicuously displayed.
§ 864. Voting power of stockholders.
§ 865. Election to be by ballot.
§ 866. Qualification of directors.
§ 867. Cumulative voting.
§ 868. By-laws. How made.
§ 869. Officers.
§ 870. Meetings of directors, executive committee, quorum, etc.
§ 871. Vacancies by failure to elect trustees, or to qualify.
§ 872. Vacancies in board of directors.
§ 873. Revisory power of court.
§ 874. Stock personal estate. Transfer of. Married women may transfer, same as feme sole.
§ 875. Payment of subscribed capital stock.
§ 876. Sale for non-payment of calls, etc.
§ 877. When company may buy its stock.
§ 878. Stockholders liable until subscriptions are fully paid.
§ 879. Trustees not personally liable.
§ 880. Liabilities created by statutes of other states not to be enforced in this state.
§ 881. Filing certificate upon payment of capital.
§ 882. Penalty for neglect to file same after written demand.
§ 883. Conversion of preferred stock into bonds. Issue of bonds convertible into common stock.
§ 884. Incorporators may amend certificate of incorporation before payment of capital.
§ 885. Surviving incorporators may designate others for organization.
§ 886. Error and omission in certificate of incorporation cured by amendment.
§ 887. Amendment and changes after organization.
§ 888. Amendments by corporations formed under other acts.
§ 889. Method of decrease of capital stock.

§ 890. Merger.
§ 891. Agreement of mergers.
§ 892. Payment for stock of dissatisfied stockholders.
§ 893. Liability not affected by merger or decrease of capital.
§ 894. Bonds, etc. Power of consolidated company.
§ 895. Sale of franchise.
§ 896. Manner of sale.
§ 897. Forfeiture of charter for failure to commence business.
§ 898. Incorporation cannot be attacked collaterally.
§ 899. How sale of stock below par may be made.
§ 900. May issue stock for labor, or real property, or personal property.
§ 901. Stock so issued is paid.
§ 902. Certificate of stock.
§ 903. Exemption of stock held by non-residents.
§ 904. Voting-list of stockholders, and stock-ledger.
§ 905. Stock-ledger to determine who may vote. Proxies to be filed.
§ 906. Stock held by executors, etc. How voted.
§ 907. Pledge of stock, and voting power of pledgor.
§ 908. Treasury stock not to be voted.
§ 909. Lost certificates.
§ 910. Proceedings in court to obtain new certificate.
§ 911. Security on transfer.
§ 912. Dividends.
§ 913. Subdividing capital stock.
§ 914. Capital stock not to be reduced, etc. Proviso.
§ 915. Removal of place of business without amendment.
§ 916. Filing copy of articles in other counties.
§ 917. Book for names of members. Stock-ledger.
§ 918. Information for creditor of stockholder.
§ 919. Publishing false statements a misdemeanor.
§ 920. Officers liable for damages caused thereby.
§ 921. Penalty for making false entry.
§ 922. Keeping fraudulent account a crime.
§ 923. Wilful destruction of books, making false entries, etc.
§ 924. Removal of directors.
§ 925. Proceedings for removal of officers in certain cases by majority vote in court.
§ 926. Proceedings to organize such meeting.
§ 927. Removal of officers or directors in certain cases, and election of new board in court by majority vote.
§ 928. The preceding sections optional with corporations hereafter formed.
§ 929. Incorporation need not be proven.
§ 930. Validating articles of incorporation.
§ 931. Report of election to secretary of state.

§ 932. Lien of employees.
§ 933. Service of legal process.
§ 934. Surrender of corporate rights before payment of capital stock.
§ 935. Dissolution of a corporation.
§ 936. Continuation of corporation after dissolution for purposes of suit, etc.
§ 937. Trustees after dissolution.
§ 938. Powers of trustees after dissolution of company.
§ 939. Appointment of receivers.
§ 940. Receiverships and dissolution by the court.
§ 941. Proceedings when a receiver is appointed.
§ 942. Sale of property and franchise.
§ 943. Sale of deteriorating property.
§ 944. Compensation of receivers.
§ 945. Corporations for mining purposes. Capital stock consisting of mining-ground.
§ 946. Mining corporations governed by district mining laws.
§ 947. Mining corporations may become stockholders, etc.
§ 948. Fees of secretary of state.
§ 949. The secretary of state to compile and publish, biennially, a list of corporations.
§ 950. Meaning of certain terms used in this act.
§ 951. Seal.
§ 952. Retaliatory taxation.
§ 953. Renewal of charters.
§ 954. Filing certificates and recording copy.
§ 955. Renewal.
§ 956. May hold stock, etc., of other corporations.
§ 957. Meetings held by consent without notice.
§ 958. Waiver.
§ 959. Amendment of this act.
§ 960. Repealing and continuing certain acts in force. Vested rights not impaired.
§ 961. Foreign corporations. To file legal copies of charter with secretary of state.
§ 962. Same. Fees as if organized in Nevada.
§ 963. Same. Penalty for neglect. Duties of state and county officers.
§ 964. Same. Repeal.
§ 965. Same. Foreign corporations and associations to make and keep agents in this state, upon whom all legal process may be served. Agent to reside in the state.
§ 966. Same. Serving of process.
§ 967. Same. Penalty for failure to appoint agent.
§ 968. Same. To publish annual statements.
§ 969. Same. Statement filed with each county assessor.
§ 970. Same. Penalty for neglect.

§ 971. Same. Any district attorney can commence suit.
§ 972. Same. Repealing clause.
§ 973. Right of eminent domain granted to foreign corporations.

CHAPTER XVIII.

STATE AND TERRITORIAL STATUTES. NEW MEXICO.

§ 974. Notice of location.
§ 975. Discovery-shaft.
§ 976. Equivalent of discovery-shaft.
§ 977. Recording notice of location.
§ 978. Marking surface boundaries.

CHAPTER XIX.

STATE AND TERRITORIAL STATUTES. NORTH DAKOTA.

§ 979. Length of lode claim.
§ 980. Width of lode claim.
§ 981. Discoverer to record claim. When recorded.
§ 982. Certificate may be void when.
§ 983. Manner of locating claim. Discovery-shaft.
§ 984. Manner of marking surface boundaries.
§ 985. Equivalent of discovery-shaft.
§ 986. Time in which location-work must be done.
§ 987. Certificate construed to contain what.
§ 988. Claim not extended beyond exterior lines.
§ 989. Owner of land may demand security from miner.
§ 990. Amended certificate may be filed.
§ 991. Amount of annual labor.
§ 992. Relocating abandoned claims.
§ 993. Certificate to contain but one location.

CHAPTER XX.

STATE AND TERRITORIAL STATUTES. OREGON.

§ 994. Recording notice of location.
§ 995. Equivalent of discovery-shaft.
§ 996. Notice of location. Posting.
§ 997. Discovery-shaft. Part of assessment-work.
§ 998. Same. Law governing.
§ 999. Affidavit of location-work.

§ 1000. Mining claims are real estate.
§ 1001. Mining claims exempt from taxation.
§ 1002. Grub-stake contracts shall be in writing.
§ 1003. Marking boundaries.
§ 1004. Abandoned claims deemed unappropriated mineral lands.

CHAPTER XXI.

STATE AND TERRITORIAL STATUTES. SOUTH DAKOTA.

§ 1005. Location and size of claims. Length of lode claim fifteen hundred feet.
§ 1006. Width of lode.
§ 1007. Discoverer to record claim when, and when recorded.
§ 1008. Certificate will be void when.
§ 1009. Manner of locating claim.
§ 1010. Marking surface boundaries.
§ 1011. Requisite of a location.
§ 1012. Time in which labor must be performed.
§ 1013. Certificate construed to contain what.
§ 1014. Claim not extended beyond exterior lines.
§ 1015. Owner of land may demand security of miner.
§ 1016. Amended certificate may be filed.
§ 1017. Amount of work that must be done annually.
§ 1018. Relocating abandoned claims.
§ 1019. Certificate can contain but one location.
§ 1020. Fee for recording.

CHAPTER XXII.

STATE AND TERRITORIAL STATUTES. UTAH.

§ 1021. Notice of location.
§ 1022. Discovery-shaft.
§ 1023. Mining districts.
§ 1024. Marking boundaries.
§ 1025. Recording notice of location.
§ 1026. Filing affidavit of work done.

CHAPTER XXIII.

STATE AND TERRITORIAL STATUTES. WASHINGTON.

§ 1027. Mining claims and rules of mining districts. Notice of location.
§ 1028. Discovery-shaft. Boundaries.
§ 1029. Cut or tunnel in lieu of shaft.
§ 1030. Definition of term "lode."
§ 1031. Amended certificate of location.
§ 1032. Proof of assessment-work.
§ 1033. Effect of record of proof.
§ 1034. Relocation. How made.
§ 1035. Limitation of rule as to shafts.
§ 1036. Location of placer claims. How made.
§ 1037. Effect of record. Evidence.
§ 1038. Mining districts. Rules and regulations.
§ 1039. Road-building as assessment-work.

CHAPTER XXIV.

STATE AND TERRITORIAL STATUTES. WYOMING.

§ 1040. Notice of location. Lode claim.
§ 1041. Marking boundaries.
§ 1042. Discovery-shaft.
§ 1043. Recording location-certificate.
§ 1044. Location-certificate void when.
§ 1045. Equivalent of discovery-shaft.
§ 1046. Relocation of abandoned claims.
§ 1047. Location-certificate of placer claim.
§ 1048. Notice of location.
§ 1049. Assessment-work on placer claim.
§ 1050. Amount of assessment-work on placer claim.
§ 1051. Assessment-work upon contiguous claims.
§ 1052. Assessment-work may be regulated by mining district.
§ 1053. Effect of failure to do assessment-work.
§ 1054. Affidavit of assessment-work done.

PART III.

FORMS.

FEDERAL, STATE, AND TERRITORIAL.

FORMS IN PROCEEDINGS TO OBTAIN PATENT.

UNITED STATES.

Form 1. Application to United States surveyor-general for survey of mining claims.
Form 2. Resolution adopted by corporation authorizing individual to represent company in the patent proceedings.
Form 3. Notice of application for patent.
Form 4. Proof of posting notice and plat upon the claim.
Form 5. Application for patent.
Form 6. Order of publication of notice.
Form 7. Publisher's agreement.
Form 8. Proof of publication of notice.
Form 9. Proof that plat and notice remained posted on the claim during the time of publication.
Form 10. Statement of fees and charges.
Form 11. Application to purchase.
Form 12. United States patent. Lode claim.

FORMS OF NOTICES OR CERTIFICATES OF LOCATION IN DIFFERENT STATES AND TERRITORIES.

ALASKA.

(See p. 727.)

ARIZONA.

Form 13. Notice of lode location.
Form 14. Notice of location of placer claim.

CALIFORNIA.

(See p. 731.)

COLORADO.

Form 15. First or preliminary notice for posting.
Form 16. Notice of location of lode mining claim to be recorded.
Form 17. Preliminary notice of placer claim for posting.
Form 18. Certificate of placer location to be recorded.

IDAHO.

Form 19. Discovery-notice for posting on lode claim.
Form 20. Notice of location of lode claim.
Form 21. Placer location notice.

MONTANA.

Form 22. Notice of location of lode mining claim for posting.
Form 23. Certificate of location of lode mining claim to be recorded.
Form 24. Preliminary notice to be posted on placer claim.

NEVADA.

Form 25. Preliminary notice for posting on lode claim.
Form 26. Location-certificate of lode claim to be recorded.
Form 27. Notice of location for placer claim for posting.
Form 28. Certificate of location. Placer claim. To be recorded.

NEW MEXICO.

Form 29. Location-notice of lode claim.

NORTH DAKOTA.

Form 30. Preliminary notice for posting on lode claim.
Form 31. Certificate of location of lode claim to be recorded.

OREGON.

Form 32. Certificate of lode location.
Verification.

SOUTH DAKOTA.

Form 33. Certificate of register for posting.

UTAH.

Form 34. Certificate of location for lode claim.
Form 35. Placer location.

WASHINGTON.

Form 36. Notice for posting on lode claim.
Form 37. Notice of location of lode claim for recording.
Form 38. Notice for posting on ground of placer claim.
Form 39. Affidavit of location-work on placer claim.

WYOMING.

Form 40. Preliminary notice for posting.
Form 41. Certificate of location of lode claim.

FORM OF AMENDED LOCATION-NOTICE.

Form 42. Amended location-notice.

FORMS FOR MILL-SITE LOCATION.

Form 43. Location of a mill site.

FORM FOR TUNNEL SITE.

Form 44. Location notice or certificate of tunnel site for posting on the ground and for recordation.
Table of measurements to determine surface area of mining claims, mill sites, etc.

FORMS FOR FORFEITURE TO CO-OWNER.

Form 45. Forfeiture notice.
Form 46. Proof of publication of forfeiture notice.

FORMS OF PROOF OR AFFIDAVITS OF ANNUAL LABOR.

ALASKA.
Form 47. Proof of annual labor.
ARIZONA.
(See pp. 534, 771.)
CALIFORNIA.
Form 48. Affidavit of annual labor.
COLORADO.
(See pp. 579, 772.)
IDAHO.
(See pp. 587, 773.)
NEVADA.
Form 49. Affidavit of annual labor.
UTAH.
Form 50. Affidavit of annual labor.
WASHINGTON.
Form 51. Proof of annual assessment-work.

WYOMING.

Form 52. Proof of labor.

FORM OF OPTION.

Form 53. Option with privilege of working, etc.

FORM OF LEASE.

Form 54. Lease for lode mining claim.

FORM OF MINING DEED.

Form 55. Quitclaim deed.

FORM FOR GRUB-STAKING.

Form 56. Prospecting or grub-stake contract.
Form 57. Notice of non-liability for labor or materials furnished.

FORMS IN ADVERSE CLAIMS.

Form 58. Adverse claim.
Form 59. Complaint in support of adverse.
Form 60. Answer.

FORM FOR OIL LEASE.

Form 61. Oil lease.

FORM OF ARTICLES OF INCORPORATION.

ARIZONA.

Form 62. Articles of incorporation.

CALIFORNIA.

Form 63. Articles of incorporation.

NEVADA.

Form 64. Articles of incorporation.

FORM OF BY-LAWS.

Form 65. By-laws.

FORM PAGES.

Form	Page	Form	Page
1	709	34	752
2	710	35	753
3	711	36	754
4	713	37	755
5	714	38	756
6	717	39	757
7	717	40	758
8	718	41	758
9	719	42	761
10	720	43	763
11	722	44	765
12	723	45	768
13	728	46	769
14	729	47	770
15	731	48	771
16	732	49	773
17	733	50	773
18	734	51	774
19	734	52	775
20	735	53	776
21	737	54	780
22	738	55	783
23	738	56	785
24	740	57	787
25	741	58	789
26	741	59	795
27	743	60	800
28	744	61	804
29	745	62	807
30	747	63	812
31	747	64	814
32	749	65	816
33	751		

TABLE OF CASES CITED.

A

Pages

Acme Cement & Pl. Co., ... 29
Acme Oil & Min. Co. v. Williams, ... 806
Adams v. Polglase, ... 28
Adams v. Quijada, ... 178
Ah Yew v. Choate, ...3, 21
Ajax Gold Min. Co. v. Hilkey, ...257, 258
Alameda Lode, ... 163
Alaska Copper Co., In re, ...61, 62, 63, 64, 65
Alaska Gold Min. Co. v. Barbridge, ... 34
Alaska Placer Claim, ... 173
Albert F. Harsh, ... 207
Alemany v. Petaluma, ... 273
Alford v. Barnum, ... 31
Alice Edith Lode, ... 163
Alldritt v. Northern Pac. R. Co., ... 48
Allen v. Dunlap, ... 127
Amador-Medean Gold Min. Co. v. South Spring Hill G. Min. Co., ...235, 239
Amador Queen Min. Co. v. Dewitt, ...286, 293
Ambergris Min. Co. v. Day, ...80, 84
American Consol. Min. & M. Co. v. De Witt, ... 186
American Flag Lode, ... 168
Anaconda C. Min. Co. v. Second Judicial Dist. Court, ...210, 260
Antediluvian Lode and Mill Site, ... 171
Anthony v. Jillson, ...67, 99, 200
Argillite Ornamental Stone Co., Ex parte, ...34, 162
Argonaut Min. Co. v. Kennedy Min. & M. Co., ...244, 247, 249
Armstrong v. Lower, ...5, 73, 89, 155
Aurora Hill Consol. Min. Co. v. Eighty-five Min. Co., ...134, 210
Aztec L. & C. Co. v. Tomlinson, ... 183

B

Baca Float No. 3, In re, ... 34
Back v. Sierra Nevada Consol. Min. Co., ... 57
Baker v. Butte City Water Co., ...86, 87
Bakersfield Fuel & O. Co. v. Saalburg, ... 29
Baltimore R. Co. v. Kountz, ... 539

Pages
Bank v. Bissell, ... 303
Barden v. Northern Pac. R. Co., ... 31
Barney v. Baltimore, ... 539
Bay State Gold Min. Co. v. Trevillion, ... 190
Bay State Silver Min. Co. v. Brown, ...202, 206
Beals v. Cone, ... 148
Beatty v. Gregory, ...12, 13
Becker v. Pugh, ...13, 15, 105, 202
Belk v. Meagher, ...6, 7, 26, 134, 151, 152, 217
Belligerent and Other Lode Min. Claims, ... 95
Bell v. Wilson, ... 1
Bena Town Site, ... 275
Bennett v. Harkrader, ...22, 113, 199
Benson Min. & S. Co. v. Alta Min. & S. Co., ...134, 209
Berry v. Woodburn, ...300, 303
Billings v. Aspen Min. & S. Co., ...68, 69
Bishop v. Baisley, ... 135
Bissell v. Foss, ... 308
Black v. Elkhorn Min. Co., ...147, 219
Blackburn v. Portland Gold Min. Co., ...194, 195, 206
Black Lead Lode Extension, ... 138
Blackmore v. Reilly, ... 281
Bohanon v. Howe, ... 67
Boland, Estate of, ... 315
Bolsa Land Co. v. Burdick, ... 35
Bonanza Consol. Min. Co. v. Golden Head Min. Co., ... 116
Bonesell v. McNider, ... 193
Bonner v. Meikle, ...279, 284
Bonner v. Rio Grande S. R. Co., ... 7
Book v. Justice Min. Co., ...72, 78, 83, 98, 102, 108, 111, 112, 115, 118, 135, 136, 140, 301, 303
Boston & M. Consol. C. & S. Min. Co. v. Montana O. P. Co., .. 220
Boucher v. Mulverhill, ...13, 303
Boughman v. National Water Works Co., ... 539
Bradley v. Lee, ... 11
Bradstreet v. Rehm, ... 187
Brady v. Husby, ... 117
Bramlett v. Flick, ... 118
Branagan v. Dulaney, ...192, 227, 262
Bretlef v. Swift, ... 168
Brewster v. Shoemaker, ... 77
Brick Pomeroy Mill-site Co., In re, ... 62
Broad Ax Lode, ... 168
Brockbank v. Albion Min. Co., ...99, 117
Brown v. Bowman, ... 302
Brown v. '49 & '56 Quartz Min. Co., ... 9
Brown v. Gurney, ... 144, 173
Brown v. Hitchcock, ... 183

Pages
Brown v. Northern Pac. R. Co., ... 478
Buffalo Zinc & C. Co. v. Crump, ... 149
Bullion, Beck & C. Min. Co. v. Eureka Hill Min. Co., ... 256
Bunker Hill Min. & C. Co. v. Shoshone Min. Co., ...159, 183
Bunker Hill & S. M. & C. Co. v. Empire State-Idaho M. & D. Co., ...118, 240, 242, 256
Burke v. Bunker Hill & S. Min. & C. Co., ... 197
Burke v. McDonald, ...6, 37, 41, 42, 66, 78, 79, 94
Burns v. Clark, ... 61
Burnside v. O'Connor, ... 186
Burton v. Wookey, ... 304
Butte City Smoke-House Lode Cases, ... 279
Butte City Water Co. v. Baker, ...11, 22, 24, 87, 129
Bybee v. Hawkett, ... 305
Byrne, Estate of, ... 315
Byrnes v. Douglass, ... 291

C

Caledonia Gold Min. Co. v. Noonan, ... 31
Calhoun G. Min. Co. v. Ajax G. Min. Co., ..4, 60, 210, 214, 257, 265
Callahan v. James, ...277, 282
Campbell v. Argenta G. & S. Min. Co., ... 220
Campbell v. Ellet, ...23, 58
Campbell v. Rankin, ...16, 131
Capricorn Placer, ... 170
Carson City Gold & S. Min. Co. v. North Star Min. Co., ...43, 162, 171, 176, 233, 247, 255
Carter v. Bacigalupi, ...111, 112, 222
Carter v. Thompson, ...215, 279
Cascaden v. Bartolis, ...79, 83
Cascaden v. Dunbar, ...300, 302
Cassel, Elmer F., ... 138
Castle v. Womble, ...72, 79
Cedar Canyon Consol. Min. Co. v. Yarwood, ... 77
Chambers v. Harrington, ...139, 194, 206
Chambers v. Jones, ... 279
Champion Min. Co. v. Consolidated Wyoming G. Min. Co., ... 271
Charles v. Eshelman, ...308, 309, 310
Cheesman v. Shreeve, ...42, 72, 78, 106, 113, 128, 156, 239, 246, 261
Chicago-Joplin L & Z. Co., In re, ... 358
Chicago Placer Claim, ...176, 178
Chrisman v. Miller, ...81, 338, 339
Chrisman v. Miller & H. O. Co., ... 208
Cisna v. Mallory, ... 302
Clark v. Fitzgerald, ... 238
Clark v. McElvy, ... 222
Cleary v. Skiffich, ... 61

Pages
Cleveland v. Eureka No. 1 G. M. & M. Co., ...140, 173
Clipper Min. Co., ... 196
Clipper M. Co. v. Eli M. Co., ...7, 51, 52, 177, 191, 195, 196, 206, 207, 211, 217, 227, 228, 257
Cobb v. Lincoln Park Commissioners, ... 35
Coburn v. San Mateo Co., ... 35
Collins v. Bartlett, ... 157
Colman v. Clements, ... 17
Colorado Cent. Con. Min. Co. v. Turck, ...234, 237, 238, 239
Colorado C. & I. Co. v. United States, ... 214
Columbia Copper Min. Co. v. Duchess Min. M. & S. Co., ...73, 78, 114, 123
Conant v. Smith, ... 317
Condon v. Mammoth Min. Co., ... 168
Conlin v. Kelly, ... 46
Conn v. Oberto, ...27, 144, 145, 146
Consolidated Channel Co. v. Central Pac. R. Co., ... 286, 291
Consolidated Repub. Mt. Min. Co. v. Lebanon Min. Co., ... 15
Consolidated Wyo. G. Min. Co. v. Champion Min. Co.,....40, 210, 233, 260, 270
Copper River Min. Co. v. McClellan, ...302, 304
Corning v. Pell, ... 180
Corning Tunnel Co. v. Pell, ... 57
Cosmopolitan Min. Co. v. Foote, ... 240
Cosmos Explor. Co. v. Gray Eagle Oil Co., ... 183
County of Kern v. Lee, ... 120
County of San Mateo v. Coburn, ... 291
County of Sutter v. Nichols, ... 384
Cowell v. Lammers, ... 31
Craig v. Thompson, ... 124
Craw v. Wilson, ... 301
Crawshay v. Maule, ... 304
Credo Min. & S. Co. v. Highland Min. & M. Co., ...102, 104
Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co.,.... 4, 11, 58, 72, 77, 100, 106, 190, 191, 209, 214, 215, 217
Crœsus Min. M. & S. Co. v. Colorado L. & M. Co.,.....68, 107, 108, 119, 201
Cronin v. Bear Creek G. Min Co., ... 200
Crossman v. Pendery, ... 146
Crowder, In re, ... 478
Crown Point Min. Co. v. Buck, ... 28
Cummings v. Peters, ... 291
Cunningham v. Pirrung, ...27, 154

D

Daggett v. Yreka Min. & M. Co., ...98, 108, 111, 120, 249, 261
Dahl v. Montana Copper Co., ...71, 178

Pages
Dahl v. Raunheim, ...178, 209, 216
Dargin v. Koch, ... 184
Davidson v. Bordeaux, ... 140
Davis, In re, ...33, 34
Davis v. Butler, ... 144
Davis v. Dennis, ...66, 145
Davis v. Shaperd, ...231, 235, 242, 253
Davis v. Wiebbold, ...26, 212, 279, 280
Dayton Min. Co. v. Seawell, ... 289
Deffeback v. Hawke, ... 157
De Garcia v. Eaton, ... 198
De Lamar's Nevada G. Min. Co. v. Nesbitt, ... 133
Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., ..4, 5, 20, 105, 108, 225, 226, 234, 239, 246, 249, 254, 257, 258, 259
Del Monte Min. & M. Co. v. New York & L. C. Min. Co.,....242, 254
Dellapiazza v. Foley, ... 310
Delmonico v. Roudebush, ... 304
Deniss v. Sinnott, ... 203
Deno v. Griffin, ...209, 210
Derry v. Ross, ... 144
Doe v. Waterloo Min. Co., ...69, 77, 99, 100, 102, 105, 170, 206, 210, 211, 238, 254
Doe v. Sanger, ...95, 252
Doe v. Tyler, ... 102
Doherty v. Morris, ...136, 199
Dolan v. Passmore, ... 129
Donahue v. Meister, ...15, 111, 112
Dotson v. Arnold, ... 188
Dower v. Richards, ...279, 281
Downey v. Rogers, ... 46
Downing v. More, ... 296
Downs, John, ... 163
Drake v. Gilpin Min. Co., ... 223
Duff v. Maguire, ... 305
Duggan v. Davey, ...258, 261
Duluth v. Bena Town Site, ... 275
Dunlap v. Pattison, ... 69
Dunphy, Elijah M., ... 161
Du Prat v. James, ... 103
Durant v. Corbin, ...92, 204
Durgan v. Redding, ... 201
Duryea v. Burt, ... 308, 310
Dutch Flat Water Co. v. Mooney, ... 15
Duxie Lode, ... 90
Dwinnell v. Dyer, ...23, 24
Dye v. Crary, ... 117

E

Pages
Eagle v. Bucher, ... 303, 305
Earl of Rosse v. Wainman, ... 3
East Cent. Eureka Min. Co. v. Central M. Co., ... 247
Eberle v. Carmichael, ...13, 301
Eilers v. Boatman, ...26, 118
Elder v. Horseshoe Min. & M. Co., ...142, 143
Electric-Magnetic Min. & D. Co. v. Van Auken,..... 89
Elfrink v. Lundell, ... 514
Elijah M. Dunphy, ... 161
Elk Park M. & M. Co., In re, ... 358
Elliott v. Southern Pac. R. Co., ... 32
Ellsworth v. Dorwart, ... 566
Elmer F. Cassel, ... 138
Emerson v. McWhirter, ... 15
Emerson v. Yosemite G. M. & M. Co., ... 149
Emery v. Mason, ... 303
Emily Lode, ... 163
Emma Lode, ... 162
Emperor Wilhelm Lode, ... 165
Empire Mill & M. Co. v. Tombstone Mill & M. Co., ... 246
Empire State-Idaho Min. & D. Co. v. Bunker Hill & S. Min. & C. Co., ...118, 196, 234, 242, 244, 253
English v. Johnson, ...9, 16, 17
Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 13, 57, 58, 142, 143, 191
Erhardt v. Boaro, ...11, 77, 88, 90, 98, 99, 113, 114, 123, 128, 139
Erwin v. Perego, ...72, 74, 99, 111, 196, 202
Esmond v. Chew, ... 15
Estate of Boland, ... 315
Estate of Byrne, ... 315
Eubanks v. Petree, ... 305
Eugene McCarthy, ... 168
Eureka Consol. Min. Co. v. Richmond Min. Co., ...36, 37, 232, 247
Ex parte Ah Pong, ... 21
Ex parte Argillite Ornamental Stone Co., ... 34
Ex parte Logan, ... 34

F

F. A. Hyde & Co., ... 183
Farmington Gold Min. Co. v. Rhymney Gold & C. Co., ... 118
Farr, In re, ... 33
Faxon v. Barnard, ...121, 124, 128, 204
Fee v. Durham, ... 149
Fereday v. Wightwick, ... 308
Field v. Grey, ... 72
Field v. Tanner, ... 148, 149
Fitzgerald v. Clark, ...238, 254

Pages
Flagstaff Silver Min. Co. v. Tarbet, ...20, 43, 237, 239, 245, 246
Flaherty v. Gwinn, ... 12
Fletcher v. Peck, ... 286
Floyd v. Montgomery, ...163, 186
Foote v. National Min. Co., ... 91
Forbes v. Gracey, ...2, 9, 19
Foster v. White, ...566, 567
Ft. Maginnis, ... 29
Fox v. Mutual Min. & M. Co., ... 174
Fox v. Meyers, ...79, 113
Francoeur v. Newhouse, ... 31
Frazier Borate Min. Co. v. Calm, ... 182
Frederick A. Williams, ... 175
French v. Lancaster, ... 30
Fuller v. Harris, ...70, 119, 257
Funk v. Sterrett, ...98, 100

G

Gallagher v. Gray, ... 50
Galveston etc. R. Co. v. Gonzales, ... 539
Garrard v. Silver Peak Mines, ... 216
Garthe v. Hart, ... 221
Gary v. Todd, ... 49
Gear v. Ford, ...136, 149
Gelcich v. Moriarty, ... 102
Gemmell v. Swain, ... 73
Gibson v. Anderson, ... 30
Gillis v. Downey, ... 193
Gilpin v. Sierra Nevada Consol. Min. Co., ... 258
Gird v. California Oil Co., ...92, 111, 121, 127, 135, 139, 203
Giroux v. Scheurman, ... 192
Glacier Mountain Silver Min. Co. v. Willis, ...11, 12, 15, 57, 93
Gleeson v. Martin White Min. Co., ...15, 36, 77, 99
Gold Crown Lode, ... 170
Goldberg v. Bruschi, ...148, 149
Golden and Cord Lode Min. Claims, ... 140
Golden Chief "A" Placer Min. Claim, ... 97
Golden Crown Lode Mine, ... 159
Golden Fleece Gold & S. Min. Co. v. Cable Consol. G. & S. Min. Co., ...9, 10, 11, 12, 16, 26, 67, 108, 170, 195
Goldstein v. Juno Town Site, ... 281
Goodlett v. Louisville etc. R. Co., ... 520
Gore v. McBrayer, ...12, 69, 300, 302
Gowdy v. Kismet Gold Min. Co., ...165, 175, 188
Gray v. Truby, ... 89
Great Western Lode Claim, ... 168
Gregory v. Harris, ... 15

Pages
Gregory v. Pershbaker, ...36, 37, 44, 74, 115, 120
Griffin v. American Gold Min. Co., ... 245
Gropper v. King, ... 15
Ground Hog Claim v. Parole and Min. Star, ... 193
Gurney v. Brown, ...27, 213, 214
Gwillim v. Donnellan, ...75, 194

H

Haeussler v. Missouri Iron Co., ... 317
Haggin, J. B., In re, ... 64
Hahn v. James, ...86, 87
Hall v. Arnott, ... 26
Hall v. Kearny, ...60, 136, 139, 150
Hamilton v. Southern Nevada G. & S. Min. Co., ... 221
Hammer v. Garfield Min. & M. Co., ...13, 115, 169
Hanson v. Boothman, ... 304
Hard Cash and Other Mill-site Claims, ... 65
Harkrader v. Carroll, ... 144
Harkrader v. Goldstein, ... 281
Harley v. Montana Ore P. Co., ... 73
Harrington v. Chambers, ... 36
Harris v. Equator Min. & S. Co., ... 6
Harris v. Hillegass, ... 303
Harris v. Kellogg, ...23, 551
Harsh, Albert F., ... 207
Hartman v. Smith, ...62, 63
Harvey v. Ryan, ...12, 17
Hauck, John C., ... 162
Hausen v. Fletcher, ... 93
Hawley v. Diller, ... 183
Haws v. Victoria Copper Min. Co., ... 155
Hayes v. Lavagnino, ... 36
Healey v. Rupp, ...77, 169, 190
Heine v. Roth, ... 34
Helena etc. Co. v. Dailey, ...190, 462
Henderson v. Fulton, ...47, 48
Hermocilla v. Hubbell, ... 32
Herron v. Superior Court, ... 358
Heydenfeldt v. Daney Gold & S. Min. Co., ... 33
Hext v. Gill, ... 3
Hickey v. Anaconda Copper Min. Co., ...24, 249
Hidden Treasure Con. Quartz Mine, ... 172
Higgins v. Armstrong, ... 310
Highland Boy Gold Min. Co. v. Strickley, ...286, 287
Highland, Marie, and Manilla Lode Min. Claims, ...64, 135
Hirbour v. Reeding, ...300, 303
Hirschler v. McKendricks, ... 149

Pages
Hitchins and Wife v. Nougues, ... 222
Hoban v. Boyer, ... 203
Hoffman v. Beecher, ... 189, 195
Hoffman v. Venard, ... 168
Hogan and Idaho Placer Min. Claims, ... 46
Holland v. Mt. Auburn G. Q. Min. Co., ... 101
Honaker v. Martin, ... 135
Hooe v. Jamison, ... 539
Hope Min. Co. v. Brown, ... 59, 143
Hopkins v. Butte Copper Co., ... 198
Hopkins v. Noyes, ... 5, 6, 221
Horswell v. Ruiz, ... 6
Hough v. Hunt, ... 136
Howeth v. Sullenger, ... 98, 100
Hoyt v. Russell, ... 23, 125
Hoyt v. Smith, ... 303, 304
Hughes v. Devlin, ... 316
Hughes v. Ochsner, ... 186
Hulings v. Ward Town Site, ... 282
Hunt v. Eureka Gulch Min. Co., ... 192
Hyde & Co., F. A., ... 192
Hyman v. Wheeler, ... 38

I

Iba v. Central Assoc. of Wyoming, ... 189
Illinois Cent. R. Co. v. Illinois, ... 34
In re Alaska Copper Co., ... 61, 62, 63, 64, 65
In re Baca Float, ... 34
In re Brick Pomeroy Mill-site Co., ... 62
In re Chicago-Joplin L. & Z. Co., ... 358
In re Crowder, ... 478
In re Davis, ... 33, 34
In re Elk Park M. & M. Co., ... 358
In re Farr, ... 34
In re J. B. Haggin, ... 64
In re Keen, ... 479
In re Kolomokas Gold Min. Co., ... 29
In re Mabel Lode, ... 61
In re Mitchell, ... 77
In re Monk, ... 23
In re Robert J. Watson, ... 71
In re Rollins G. & S. Co., ... 358
In re Tumacacori and Calabazas Grant, ... 34
In re United Verde Copper Co., ... 354
In re White, ... 354
In re Woodside Coal Co., ... 358
In re Yankee Lode Claim, ... 157

Pages
Iron Silver Min. Co. v. Campbell, ...214, 260
Iron Silver Min. Co. v. Cheesman, ...36, 39, 42, 257, 260
Iron Silver Min. Co. v. Elgin Min. & S. Co., ..43, 95, 247, 249, 258
Iron Silver Min Co. v. Mike & S. G. & S. Min. Co., ...39, 52, 54, 55, 177, 258
Iron Silver Min. Co. v. Murphy, ...40, 237
Iron Silver Min. Co. v. Reynolds, ...53, 54, 55, 212
Ivanhoe Min. Co. v. Keystone Consol. Min. Co., ... 32

J

Jackson v. Roby, ...11, 73, 132, 135, 137, 206
Jackson v. White Cloud G. Min. & M. Co., ... 202
Jacobs v. Day, ... 17
Jas. Caretto and Other Lode Claims, ... 137
Jantzon v. Arizona Copper Co., ...98, 118
Jeffords v. Hine, ... 184
Jennings v. Rickard, ...303, 304
Jennison v. Kirk, ... 19
Jesse E. Oviat, ... 67
John C. Hauck, ... 162
John Downs, ... 163
Johnson v. Bunker Hill & S. M. & C. Co., ... 539
Johnson v. California Lustral Co., ... 4
Johnson v. Langdon, ...566, 567
Johnson v. McLaughlin, ...15, 23
Johnstone v. Robinson, ... 303
Jones v. Aztec L. & C. Co., ... 358
Jones v. Clark, ... 310
Jones v. Petaluma, ... 273
Jupiter Min. Co. v. Bodie Consol. Min. Co., ..13, 16, 40, 72, 75, 93, 98, 100, 101, 108, 120, 121, 127, 147, 148, 227
Justice Min. Co. v. Barclay, ...138, 139, 148
Justice Min. Co. v. Lee, ... 216

K

Kahn v. Central Smelt. Co., ...307, 308
Kannaugh v. Quartette Min. Co., ... 205
Keeler v. Trueman, ...192, 197, 217
Keen, In re, ... 479
Kendall v. San Juan Silver Min. Co., ... 30
Kennedy Min. & M. Co. v. Argonaut Min. Co., ... 244
Kern Oil Co. v. Clarke, ... 183
Kern Oil Co. v. Crawford, ...99, 178
Keystone Lode v. Nevada, ... 32
Kimberly v. Arms, ... 308
King v. Amy & S. Consol. Min. Co., ... 239, 240, 245, 246

Pages
King v. Bradford, ... 47
King v. Edwards, ...9, 16
King v. McAndrews, ... 273
Kinney v. Fleming, ...115, 144
Kinney v. Lundy, ... 154
Klopenstine v. Hays, ... 135
Knight v. United Land Assoc., ... 183

L

La Grande Inv. Co. v. Shaw, ...36, 76
Lacy v. Gunn, ...3, 23
Lakin v. Sierra Buttes G. Min. Co., ... 144
Lalande v. Town Site of Saltese, ...213, 282
Lange v. Robinson, ...81, 83
Larkin v. Upton, ... 237
Larned v. Jenkins, ... 281
Lask v. Johnson, ... 304
Last Chance Min. Co. v. Bunker Hill & S. Min. & C. Co.,....125, 227, 246, 256, 257
Last Chance Min. Co. v. Tyler Min. Co., ...122, 241, 246
Lauman v. Hoofer, ... 151
Laurents, William, ... 164
Lavagnino v. Uhlig, ...71, 217, 221
Lawrence v. Robinson, ...303, 304
Lawson v. United States M. Co., ... 208
Lawson Butte Consol. Copper Co., ... 163
Lebanon Min. Co. v. Consolidated Rep. Min. Co., ...7, 119
Ledoux v. Forester, ...69, 72, 98, 103
Lee v. Justice Min. Co., ... 67
Lee v. Stahl, ...262, 271
Leggatt v. Stewart, ... 92
Lehmer v. Carroll, ... 479
Lillie Lode Min. Claim, ... 173
Lily Min. Co. v. Kellogg, ... 194
Lincoln Placer, ... 162
Lincoln v. Rodgers, ... 14
Lin Sing v. Washburn, ... 21
Little Josephine Min. Co. v. Fullerton, ... 270
Little Pittsburgh Min. Co. v. Annie Min. Co., ... 218
Lockhart v. Farrell, ...26, 27, 73, 152
Lockhart v. Johnson, ...26, 34, 148
Lockhart v. Ogden, ... 304
Lockhart v. Rollins, ...69, 220
Lockhart v. Willis, ... 34
Logan, Ex parte, ... 34
Lone Dane Lode, ... 171
Lone Jack Min. Co. v. Megginson, ... 68
Lonergan v. Shockley, ... 180

Pages
Lorenz v. Jacob, ... 291
Louisville G. M. Co. v. Hayman Min. & T. Co., ... 170
Lucky Find Placer Claim, ... 174

M

Mabel Lode, In re, ... 61
Mackay v. Fox, ... 208
Madison Placer Claim, ... 194
Mallett v. Uncle Sam Gold & S. Min. Co., ...9, 16, 144
Malone v. Jackson, ...152, 225
Mandell v. Parks, ...309, 310
Manning v. San Jacinto Tin Co., ... 33
Manuel v. Wulff, ...68, 69, 246
Marble Lode Min. Claim, ... 174
Mares v. Dillon, ...22, 86, 126, 205
Marks v. Gates, ...300, 302, 303
Marvey v. Coffin, ... 305
Mary Darling Placer, ...45, 178
Mattes v. Treasury Tunnel, M. & R. Co., ...181, 207
Mattingly v. Lewisohn, ... 200
Maxwell Land-Grant Case, ... 214
Mayflower Gold Min. Co., ... 177
McCann v. McMillan, ... 118, 144
McCarthy, Eugene, ... 168
McCormick v. Baldwin, ...135, 149
McCormick v. Varnes, ...20, 231
McCulloch v. Murphy, ...69, 134, 149
McDonald v. Montana Wood Co., ...74, 99
McElligott v. Krogh, ...93, 95, 101
McEvoy v. Hyman, ... 128
McFadden v. Mountain View Min. & M. Co., ...29, 189
McFeters v. Pierson, ... 7
McIntosh v. Price, ...94, 117, 205
McKay v. Neussler, ... 141
McKiernan v. Hesse, ... 157
McKinley v. Wheeler, ... 70
McKinley Creek Min. Co. v. Alaska United Min. Co., ... 68
McLaughlin v. Thompson, ... 305
McMillen v. Ferrum Min. Co., ...75, 76, 84, 113, 121
McShane v. Kenkle, ... 79
Merritt v. Judd, ... 157
Meylette v. Brennan, ...300, 303
Michael v. Mills, ... 73
Midland R. Co. v. Checkley, ... 3
Midgeon v. Montana Cent. R. Co., ...53, 81
Milford Metal Mines Investment Co., ... 179
Miller v. Butterfield, ... 305

Pages
Miller v. Hamley, ...145, 227
Miller v. Taylor, ... 147
Miller & H. O. Co. v. Chrisman, ... 208
Mills v. Fletcher, ... 134
Milton v. Lamb, ... 170
Mitchell, In re, ... 77
Mitchell v. Brovo, ... 188
Mitchell v. Cline, ...44, 215
Moffat v. Blue River Gold Excav. Co., ... 152
Moffat v. United States, ... 214
Mojave Min. & M. Co. v. Karma Min. Co., ... 166
Mono Fraction Lode Mining Claim, ...29, 222
Monster Lode Min. Claim, ... 163
Mont Blanc Consol. G. Min. Co. v. Debour, ... 197
Montana Co. Lim. v. Clark, ...247, 258
Montana Ore-Purchasing Co. v. Boston & M. Consol. C. & S. Min. Co., ...212, 253
Moore v. Hammerstag, ...69, 221, 222
Moore v. Smaw, ... 33
More v. Massini, ... 35
Morgenson v. Middlesex Min. & M. Co., ... 262
Moritz v. Lavelle, ...300, 303
Morrill v. Northern Pac. R. Co., ... 49
Morrow v. Matthew, ...300, 302
Morton v. Solambo Copper Min. Co., ...9, 11, 69
Mount Diablo M. & M. Co. v. Callison, ...41, 136
Mountain View Min. & M. Co. v. McFadden, ...29, 195
Mt. Rosa Min., M. & L. Co. v. Palmer, ...217, 225, 227, 228
Mullen v. United States, ... 2
Murley v. Ennis, ...69, 78, 304, 305
Mutchmor v. McCarty, ...51, 53
Mutual Min. & M. Co. v. Currency Co., ...186, 208
Myers v. Spooner, ... 144

N

Narver v. Eastman, ... 48
Nash v. Clark, ... 287
Nelson v. Champagne Min. & M. Co., ...179, 187
Nesbitt v. Delamar's Nevada G. Min. Co., ... 139
Nettie Lode v. Texas Lode, ... 193
Nevada Sierra Oil Co. v. Home Oil Co., ...73, 75, 80, 338
Newbill v. Thurston, ... 98
New England and Coalinga Oil Co. v. Congdon, ... 338
New Mexico, Territory of, ... 33
New Orleans v. Winter, ... 539
New York Hill Co. v. Rocky Bar Co., ... 189
Nil Desperandum Placer, ...165, 170

Pages
Nisbet v. Nash, ...308, 316
Nome and Sinook Co. v. Town Site of Nome, ...281, 282
Noonan v. Caledonia Gold Min. Co., ... 11
North Bloomfield Gravel Min. Co. v. United States, ...22, 318, 371
Northern Pac. R. Co., ...169, 212
Northern Pac. R. Co. v. Marshall, ... 77
Northern Pac. R. Co. v. Soderberg, ...45, 47, 48
Northmore v. Simmons, ...12, 85, 134
North Noonday Min. Co. v. Orient Min. Co., ..9, 12, 15, 16, 66, 67, 71, 72, 76, 77, 100, 121, 127, 149, 170
Noyes v. Black, ...6, 7
Noyes v. Mantle, ...53, 228

O

O'Donnell v. Glenn, ...75, 90
Olive Land & D. Co. v. Olmstead, ... 49
Omar v. Soper, ...26, 77, 78, 144, 153
Opie v. Auburn Gold Min. & M. Co., ... 188
Orbison v. State of Utah, ... 515
Oregon King Min. Co. v. Brown, ...98, 100, 101, 122
Orr v. Haskell, ... 17
O'Reilly v. Campbell, ...66, 72
Oscamp v. Crystal River Min. Co., ...7, 130
Otaheite G. & S. Min. & M. Co. v. Dean, ... 14
Oury v. Goodwin, ... 295
Overman Silver Min. Co. v. Corcoran, ... 73, 291
Oviat, Jesse E., ... 67

P

Pacific Coast Marble Co. v. Northern Pac. R. Co., ...2, 48
Packer v. Heaton, ... 11
Page v. Summers, ...155, 305
Pardee v. Murray, ...234, 262
Parley's Park Silver Min. Co. v. Kerr, ...12, 16
Parrot S. & C. Co. v. Heinze, ... 210
Parsons v. Ellis, ... 165
Patchen v. Keeley, ...6, 7
Patterson v. Hitchcock, ... 90
Patterson v. Tarbell, ...6, 99
Paul v. Cragnaz, ... 317
Paul Jones Lode, ... 171
Peabody Gold Min. Co. v. Gold Hill Min. Co., ...162, 171, 215, 359
Pelican and Dives Min. Co. v. Snodgrass, ...5, 78
Pennsylvania Consol. Min. Co. v. Grass Valley Explor. Co., ... 239
Pennybecker v. McDougal, ... 157
People v. Coleman, ... 21

Pages
People v. District Court, ... 578
People ex rel. v. District Court, ... 23
People ex rel. Aspen Min. & S. Co. v. District Court, ... 296
People ex rel. Attorney-General v. Naglee, ... 21
Peoria & Colo. M. & M. Co. v. Turner, ...27, 28, 144
Perego v. Dodge, ...199, 206, 207
Perego v. Erwin, ... 74
Phelps v. Church of Our Lady, Help of Christians, ... 48
Philes v. Hickies, ... 223
Phillips v. Moore, ... 68
Pierce v. Bucklin, ... 305
Pike's Peak and Other Lodes, ... 169
Pollard v. Shively, ... 113
Porter v. Tonopah, North Star T. & D. Co., ...7, 125, 203
Poujade v. Ryan, ...16, 117
Powell v. Ferguson, ... 191
Power v. Sla, ... 136
Pralus v. Jefferson G. & S. Min. Co., ... 15
Pralus v. Pacific G. & S. Min. Co., ...12, 17
Pratt v. Avery, ... 165
Preston v. Hunter, ... 123
Prince v. Lamb, ...302, 310
Prosser v. Parks, ... 91
Providence G. Min. Co. v. Burke, ... 202
Purdum v. Laddin, ...16, 86, 87

Q

Quigley v. Gillett, ...140, 195

R

Railroad Lode v. Noyes Placer Min. Co., ...51, 54
Ralston v. Plowman, ... 17
Ranger v. Champion Cotton-Press Co., ... 566
Ray v. Hodge, ... 304
Raymond v. Johnson, ... 301
Reed v. Bowron, ...168, 183
Reed v. Munn, ... 218
Reins v. Murray, ...99, 178
Reins v. Raunheim, ...74, 76, 77, 206
Repeater and Other Lode Claims, ...155, 167
Republican Min. Co. v. Tyler Min. Co., ... 253
Rhea v. Lathem, ... 305
Rhea v. Vannoy, ... 305
Rialto No. 2 Placer Min. Claim, ...45, 97
Riborado v. Quang Pang Min. Co., ... 16
Rice v. Rigley, ... 302

Pages
Richards v. Wolfing, ... 155
Richmond Min. Co. v. Rose, ...93, 198
Rico-Aspen Consol. Min. Co. v. Enterprise Min. Co., ... 58
Robert J. Watson, In re, ... 71
Roberts v. Date, ... 305
Roberts v. Wilson, ... 17
Robertson v. Smith, ... 15
Rollins G. & S. Co., In re, ... 358
Roman Placer Min. Claim, ... 46
Rose v. Richmond Min. Co., ... 205
Rose No. 1 and Rose No. 2 Lode Claims, ... 162
Rosenthal v. Ives, ...66, 67
Roseville Alta Min. Co. v. Iowa Gulch Min. Co., ...217, 218
Rosse, Earl of, v. Wainmain, ... 3
Roxanna G. Min. & T. Co. v. Cone, ... 270
Royston v. Miller, ...133, 136, 139, 148, 317
Rush v. French, ...9, 67, 70, 111
Russell v. Wilson Creek Consol. M. & M. Co., ... 157
Ryan v. Granite Hill Min. & D. Co., ... 283

S

St. John v. Kidd, ...9, 144, 148
St. Louis Min. & M. Co. v. Montana Min. Co., ...192, 210, 217, 218, 240, 256, 259
St. Louis Smelting & R. Co. v. Kemp, ...4, 5, 11, 44, 176, 214
San Francisco Savings Union v. R. G. R. Petroleum & Min. Co., ...34, 35
San Mateo Co. v. Coburn, ... 291
Sanders v. Noble, ... 23, 98
Sands v. Pfieffer, ... 157
Scheel v. Alhambra Min. Co., ... 223
Schultz v. Allyn, ... 199
Schultz v. Keeler, ... 69
Score v. Griffin, ... 154
Sears v. Collins, ... 303
Secretary Teller v. Commissioner McFarland, ... 46
Senator Millsite, ... 162
Settembre v. Putnam, ... 303
Seymour v. Fisher, ...108, 193
Sharkey v. Candiani, ...24, 77, 144
Shea v. Nilima, ...68, 303
Shepherd v. Bird, ... 49
Sherlock v. Leighton, ... 139
Shirley, E. A., ... 33
Shively v. Bowlby, ... 34
Shoshone Min. Co. v. Rutter, ...80, 85, 157, 195
Shreve v. Copper Bell Min. Co., ...79, 223

Pages
Silver Bow M. & M. Co. v. Clark, ... 279
Silver City G. & S. Min. Co. v. Lowry, ... 74
Silver Peak Mines v. Valcalda, ... 65
Sinnott v. Jewett, ...189, 215
Sisson v. Sommers, ...16, 23
Skidmore v. Eikenberry, ... 304
Skillman v. Lachman, ...307, 309
Slavonian Min. Co. v. Perasich, ...134, 139, 149, 152
Smith v. Biscailuz, ... 314
Smith v. Cascaden, ... 130
Smith v. Newell, ...73, 83, 103, 108, 121, 127
Smith v. North American Min. Co., ... 13
Smoke House Lode, ... 283
Smuggler Min. Co. v. Trueworthy Lode Claim, ... 188
Snead v. Sellers, ... 539
Sold Again Fraction Mining Lode, ... 159
South Dakota v. Vermont Stone Co., ... 32
Southern California R. Co. v. O'Donnell, ...32, 246
Southern Cross G. & S. Min. Co. v. Europa Min. Co., ... 98
Southern Cross Gold Min. Co. v. Sexton, ... 165
Southern Nevada G. & S. Min. Co. v. Holmes Min. Co., ...231, 254
Sparrow v. Strong, ... 19
Speed v. McCarthy, ... 155
Springside Coal Min. Co. v. Grogan, ... 1
Stanley v. Mineral Union, ... 33
State ex rel. Anaconda Copper Min. Co. v. Second Judicial
District Court, ...210, 260
State ex rel. Wells v. Tingey, ... 286
Steel v. St. Louis Smelt. & R. Co., ...214, 278, 279
Steele v. Tanana Mines R. Co., ...72, 73, 82
Stemmons v. Hess, ... 171
Stemwinder Min. Co. v. Emma & L. C. Consol. Min. Co., ... 93
Stevens v. Gill, ...41, 42
Stevens v. Grand Central Min. Co., ...191, 194
Stevens v. Williams, ...36, 42, 92, 236
Steves v. Carson, ...198, 205
Stewart v. Douglass, ... 303
Stewart v. Westlake, ... 156
Stinchfield v. Gillis, ... 224
Stolp v. Treasury G. Min. Co., ... 136
Stone v. Bumpus, ... 15
Stranger Lode, ... 193
Strasburger v. Beecher, ... 139
Stratton v. Gold Sov. Min. & T. Co., ... 4
Strepey v. Stark, ...88, 130
Strickley v. Highland Boy G. Min. Co., ... 288
Strickley v. Hill, ... 170
Stuart v. Adams, ... 310

Pages
Sullivan v. Iron Silver Min. Co., ...51, 54, 55, 212
Sullivan v. Schultz, ... 48
Sullivan v. Sharp, ...74, 131, 151
Surprise, Fraction and Other Lode Claims, ...138, 141, 142
Sutter County v. Nichols, ... 384
Sweet v. Webber, ...6, 98
Symnott v. Shaughnessy, ... 36

T

Tabor v. Dexter, ... 42
Table Mountain Tunnel Co. v. Stranahan, ...10, 16, 91
Tam v. Story, ...72, 227
Tanner v. Treasury T. M. & R. Co., ...297, 578
Tarbott v. King, ... 281
Taylor v. Castle, ... 308
Taylor v. Middleton, ... 118
Taylor v. Parenteau, ...23, 98
Telluride Additional Town Site, ... 276
Territory v. Lee, ... 69
Territory of New Mexico, ... 33
Thallman v. Thomas, ... 213
Thomas v. Chisholm, ... 71
Thomas v. Elling, ...188, 190, 191
Thompson v. Spray, ...69, 70, 71, 170
Tillis v. Downey, ... 186
Tipton Gold Min. Co., ... 160
Tombstone Mill & M. Co. v. Way Up Min. Co., ... 239
Tomera Placer Claim, ... 74
Tonopah and Salt Lake Min. Co., v. Tonopah Min. Co., ...74, 90, 107, 108, 118, 119, 171, 204, 243, 244
Tonopah Fraction Min. Co. v. Douglass, ...200, 202
Tough Nut and Other Lode Claims, ...168, 169
Townsite of Riverton, ... 275
Traphagen v. Kirk, ...26, 31, 173
Treasury Tunnel, M. & R. Co. v. Boss, ...108, 113
Trevaskis v. Peard, ... 139
Trickey Placer, ... 163
Tripp v. Dunphy, ... 179
Tripp v. Overocker, ... 296
Tucker v. Florida R. & N. Co., ... 2
Tucker v. Masser, ... 176
Tumacacori and Calabazas Grant, In re, ... 34
Turner v. Sawyer, ...139, 142, 191, 303, 426
Tyler v. Decker, ... 157
Tyler Min. Co. v. Last Chance Min. Co., ...241, 253
Tyler Min. Co. v. Sweeney, ...241, 260

U

Pages
Union Consol. Min. Co. v. Taylor, ... 221
Union Min. & M. Co. v. Leitch, ... 99
United States v. Iron Silver Min. Co., ...39, 44, 50, 51, 52, 53, 55, 135, 140, 171, 213
United States v. Maxwell Land-Grant Co., ... 213
United States v. San Pedro and Canon del Agua Co., ... 33
United States v. Trinidad Coal & C. Co., ... 71
United States Min. Co. v. Lawson, ... 196
United Verde Copper Co., In re, ... 354
Upton v. Larkin, ...6, 11, 73, 77, 89

V

Valcalda v. Silver Peak Mines, ... 62
Van Valkenburg v. Huff, ... 70
Van Zandt v. Argentine Min. Co., ... 88
Vogel v. Warsing, ...83, 115, 118

W

Wagner v. Dorris, ... 136
Walker v. Pennington, ...107, 129
Walrath v. Champion Min. Co., ...233, 239, 246, 249, 253
Walsh v. Erwin, ...103, 108
Walton v. Wild Goose M. & Tr. Co., ...26, 93, 98, 111, 118
Waring v. Crow, ...145, 222, 304
Warnock v. De Witt, ...114, 149, 151, 155
Warren Mill Site v. Copper Prince, ... 190
Waterhouse v. Scott, ... 193
Waterloo Min. Co. v. Doe, ...28, 72, 252, 255
Watervale Min. Co. v. Leach, ...11, 26, 231, 245, 262
Watson, Robert J., In re, ... 71
Weed v. Snook, ...27, 76, 203, 218, 338, 339
Welland v. Huber, ... 301, 303
Wells v. Davis, ... 98
Wenner v. McNulty, ...75, 126, 199, 202
West Granite Mountain Min. Co. v. Granite Mountain Min. Co. 102
Westmoreland Coal Co.'s Appeal, ... 2
Whalen Consol. Copper Min. Co. v. Whalen, ...136, 149
Wheeler v. Smith, ...26, 47, 206
White, In re, ... 354
White v. Lee, ... 99
White Cloud Copper Min. Co., ... 170
Whitman v. Haltenhoff, ... 168
Wight v Dubois, ...168, 187
Wight v. Taylor, ...90, 188

Pages
Wilhelm v. Silvester, ...262, 263
William Laurents, ... 164
Williams, Frederick A., ... 175
Williams v. Gaylord, ... 3
Williams and Kellinger Original Co. v. Winthrop Min. Co., ... 13
Willitt v. Baker, ...152, 195, 197, 202
Wilson v. Freeman, ...86, 87, 88, 131, 140, 204
Winscott v. Northern Pac. R. Co., ... 31
Wolenberg, P., ... 140
Woltley v. Lebanon Min. Co., ...231, 232, 233
Wood Placer Min. Co., ...95, 96, 137
Woodruff v. North Bloomfield Gravel Min. Co., ...12, 13, 14
Woodside v. Ciceroni, ... 223
Woodside Coal Co., In re, ... 358
Woody v. Hinds, ... 201
Wright v. Killian, ... 136
Wright v. Lyons, ... 107, 121
Wright v. Town of Hartville, ...195, 283
Wulff v. Manuel, ... 68

Y

Yankee Lode Claim, In re, ... 157
Yellow Aster Min. & M. Co. v. Winchell, ... 195
Young v. Goldsteen, ...200, 284

Z

Zerres v. Vanina, ...7, 11, 124, 152
Zollars v. Evans, ... 88

PART I.

GENERAL PRINCIPLES.

CHAPTER I.

INTRODUCTORY.

§ 1. The mine defined.
§ 2. Coal-mine.
§ 3. Mineral deposit defined.
§ 4. Minerals.
§ 5. Mineral lands defined.
§ 6. Mining-ground defined.
§ 7. Location.
§ 8. Kinds of location.
§ 9. "Mining claim" and "location" used interchangeably.
§ 10. Necessity of valid location.
§ 11. Effect of valid location.
§ 12. Actual possession need not be maintained.
§ 13. Lapse of time as affecting valid location.
§ 14. Location subject to railroad right of way.

§ 1. The mine defined. A mine has been defined, not only by lexicographers,[1] but also by the courts,[2] to be a pit or excavation in the earth from which ores or mineral substances are taken by digging.

The use of the words "mines or mining claims," in a statute imposing a tax on the products of mines, and making it a lien on the "mines or mining claims from which ores or minerals bearing gold or silver, or either, or any other valuable metal," has been held as intended to distinguish between the cases in which the miner is the owner of the

[1] 2 Bouvier's Law Dict. (Rawle's ed.), p. 413.

[2] Springside Coal Min. Co. v. Grogan, 53 Ill. App. 60, 65; Bell v. Wilson, L. R. 1 Ch. App. Cas. 303.

soil, and therefore has perfect title to the mine, and those in which the miner does not have title to the soil, but works the mine under what is well known in mining districts, and what is recognized by the Federal statute, as a mining claim. In the first case, the statute makes the tax a lien on the mine, because the title to the mine is in the person who owes and should pay the tax. In the other case, the tax is a lien only on the claim of the miner; that is, on his possessory right to explore and work the mine under the existing laws and regulations on the subject.[3]

§ 2. **Coal-mine.** It has been held that the term "mine," when applied to coal, is equivalent to "a worked vein," since by working the vein it becomes a mine.[4]

§ 3. **Mineral deposit defined.** The language of the Federal statute[5] with reference to the character of the deposit as determining the right to explore and appropriate is, "all valuable mineral deposits." This does not, however, limit the deposit to that of precious metals, so called, such as gold, silver, copper, etc. On the contrary, whatever is recognized as a mineral by the standard authorities, whether a metallic or non-metallic substance, when found in public lands in quantity and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, must be treated as a mineral, in the sense in which that term is used in the mining laws. The value of the deposit, rather than its kind, is the controlling factor.[6]

§ 4. **Minerals.** The word "minerals" has been construed to mean, primarily, all substances, other than the agricultural surface of the ground, which may be got for manufacturing

[3] Forbes v. Gracey, 94 U. S. 762, bk. 24 L. ed. 313, 14 Morr. Min. Rep. 183.

[4] Westmoreland Coal Co.'s Appeal, 85 Pa. St. 344, 10 Morr. Min. Rep. 394.

[5] U. S. Rev. Stats., § 2319; 5 Fed. Stats. Ann., p. 4; Stats. at L., p. 91; Comp. Stats. 1901, p. 1424.

[6] Tucker v. Florida R. & N. Co., 19 Land Dec. 414; Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 Land Dec. 233; Mullan v. United States, 118 U. S. 271, bk. 30 L. ed. 170.

or mercantile purposes, whether from a mine, as the word would seem to signify, or such as stone or clay, which are got by open workings.[7]

§ 5. **Mineral lands defined.** It is not easy, in all cases, to determine whether any given piece of land should be classed as mineral land or otherwise. The question may depend upon many circumstances; such as whether it is located in those regions generally recognized as mineral lands, or in a locality ordinarily regarded as agricultural in its character. Lands may contain the precious metals, but not in sufficient quantities to justify working them as mines, or to make the locality generally valuable for mining purposes, while they are well adapted to agricultural or grazing pursuits; and they may be but poorly adapted to agricultural purposes, but rich in minerals; or there may be every gradation between the two extremes. There is, however, a certain well-defined, obvious boundary between the mineral lands and those which cannot be classed in that category. Perhaps the true criterion would be to consider whether, on the whole, the lands appear to be better adapted to mining than to other purposes. However that may be, in order to determine the question it would, at all events, be necessary to know the condition and circumstances of the lands themselves and of the immediate locality in which they are situated.[8]

§ 6. **Mining-ground defined.** A California statute declaring it to be unlawful to mortgage or otherwise dispose of the whole or any part of the "mining-ground" of a mining corporation, except upon the ratification of the holders of two thirds of the capital stock, was held to be constitutional,

[7] Midland R. Co. v. Checkley, L. R. 4 Eq. 19; Earl of Rosse v. Wainman, 14 Mees. & W. 859, 10 Morr. Min. Rep. 398; Hext v. Gill, L. R. 7 Ch. App. Cas. 699.

[8] Ah Yew v. Choate, 24 Cal. 562, 1 Morr. Min. Rep. 492. See note 63 Am. Dec. 93, 96.

[9] Lacy v. Gunn, 144 Cal. 511, 515, 78 Pac. Rep. 30. See Williams v. Gaylord, 186 U. S. 157, 164, bk. 46 L. ed. 1102, 22 Sup. Ct. Rep. 798, affirming 102 Fed. Rep. 372, 42 C. C. A. 401. This statute was repealed March 7, 1905; Stats. and Amdts. 1905, p. 74; **Henning's Gen. Laws Cal.**, p. 725.

and the words "mining-ground," found in such a statute, are not to be understood as the equivalent of "lands valuable for minerals" and "valuable mineral deposits," as used in the mining laws, and that, accordingly, land cannot be considered "mining-ground" unless it is of such a character that, had it been public land, it might have been appropriated as a mining claim; but, on the contrary, it is held that when a mining corporation, in good faith, works by ordinary processes, deposits of stone or other mineral on land owned by it, with a view to utilizing the products for commercial purposes, the land so worked and exploited is "mining-ground" within the meaning of the statute, whether the undertaking results in profit or loss, and whether sound judgment and discretion would approve such use of the land or not.[10]

§ 7. **Location.** The location is the initial step taken by the locator to indicate the place and extent of surface which he desires to acquire. It is a means of giving notice.[11] It is the act or series of acts by which the right of exclusive possession of mineral veins and the surface of mineral lands is vested in the locator.[12]

§ 8. **Kinds of location.** Ordinarily, only two kinds of location are spoken of by the courts and designated by the mining regulations;[13] but, in point of fact, there are three kinds of locations, to wit, "lode locations," "placer locations," and "tunnel locations."[14]

[10] Johnson v. California Lustral Co., 127 Cal. 283, 59 Pac. Rep. 595, 20 Morr. Min. Rep. 314, where the deposit was rock called "lustral," or "paint-stone."

[11] Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

California, as to location of mine in, see **Henning's Gen. Laws Cal.**, p. 727; **Kerr's Cyc. Civ. Code Cal.**, § 1159, and note.

[12] St. Louis Smelting & R. Co. v. Kemp, 104 U. S. 636, bk. 26 L. ed. 313, 875, 11 Morr. Min. Rep. 673; Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, 49 L. ed. 501, 25 Sup. Ct. Rep. 266.

[13] See post, pt. II, ch. I.

[14] Stratton v. Gold Sov. Min. & T. Co., 1 Denver Leg. Adv. 350. See also Calhoun G. Min. Co. v. Ajax G. Min. Co., 27 Colo. 1, 83 Am.

Under the acts of Congress granting mining rights on the public domain, and under the statute of Colorado relating thereto, there are two kinds of possession of mining-ground; one where a miner, by virtue of work and improvements upon a tract of mineral land, and by occupancy thereof, holds the same independently of location statutes, against another having no better right; the other where, after discovering mineral, the miner undertakes to avail himself of the benefits of the statutes providing for the location of mining claims.[15]

§ 9. **"Mining claim" and "location" used interchangeably.** A mining claim is a parcel of land containing precious metal in its soil or rock. A location is the act of appropriating such parcel according to certain established rules. The location, which is the act of taking the parcel of mineral land, in time became, among the miners, synonymous with the mining claim originally appropriated. So now, if a miner has only the ground covered by one location, his "mining interests" and "location" are identical, and the two designations may be indiscriminately used to denote the same thing. But if by purchase he acquires the adjoining location of his neighbor and adds it to his own, then his mining claim covers the ground embraced by both locations, and henceforth he will speak of it as his claim.[16]

§ 10. **Necessity of valid location.** Possession of a mining claim without valid location carries no title.[17] Possession under a location which has become dead by reason of nonrepresentation or a failure to comply with the local rules and customs, is equivalent to possession without location at all,

St. Rep. 17, 59 Pac. Rep. 607, 50 L. R. A. 209, 20 Morr. Min. Rep. 192; s. c. 182 U. S. 499, bk. 45 L. ed. 1200.

[15] Armstrong v. Lower, 6 Colo. 581, 15 Morr. Min. Rep. 458, 631.

[16] St. Louis Smelting & R. Co. v. Kemp, 104 U. S. 636, bk. 26 L. ed. 313, 875, 11 Morr. Min. Rep. 673. See also Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

[17] Pelican & D. Min. Co. v. Snodgrass, 9 Colo. 339, 12 Pac. Rep. 206; Hopkins v. Noyes, 4 Mont. 550, 2 Pac. Rep. 280, 15 Morr. Min. Rep. 287.

as against a subsequent valid location.[18] The location, to be effectual, must be good at the time it is made.[19]

The discovery of mineral upon government land, taking possession thereof, and doing work thereon in developing a mine, without complying with the requirements of any law, either Federal or district, or with local customs, will not give title thereto as a mining claim, or right of possession, against one who discovers and peaceably locates a mining claim thereon and in all respects performs the requirements of the law, rules, regulations, and customs of the mining district; from the time of such location and compliance with the law by the locator, such prior possession is unlawful, and a trespass against the rights of such locator.[20]

But the locator of a mining claim, his grantees, or their heirs or assigns, may, by long-continued actual possession of a mining claim, acquire a better title thereto than a subsequent locator who attempts by a trespass to invade their possession and make such subsequent location, although they may not be able to establish by evidence every fact necessary to support their prior location; the performance of such acts may be presumed from and in aid of such long-continued possession.[21]

As against a trespasser without color of title, possession is sufficient to support an action of ejectment or trespass;

[18] Hopkins v. Noyes, 4 Mont. 550, 2 Pac. Rep. 280, 15 Morr. Min. Rep. 287.

[19] Belk v. Meagher, 104 U. S. 279, bk. 26 L. ed. 735, 1 Morr. Min. Rep. 510, 522. See Upton v. Larkin, 5 Mont. 600, 603, 6 Pac. Rep. 66, 68 (subsequent discovery does not vacate location).

To same effect: Sweet v. Webber, 7 Colo. 443, 4 Pac. Rep. 752 (claim must be so marked that boundaries can be readily traced); Burke v. McDonald, 2 Idaho 310, 13 Pac. Rep. 351 (mere possession not sufficient to show legal location); Noyes v. Black, 4 Mont. 527, 534, 2 Pac. Rep. 769 (possession confers no right as against valid location); Patterson v. Tarbell, 26 Oreg. 29, 35, 37 Pac. Rep. 76, 79 (discoverer must immediately mark boundaries).

[20] Horswell v. Ruiz, 67 Cal. 111, 7 Pac. Rep. 197, 15 Morr. Min. Rep. 488. See Patchen v. Keeley, 19 Nev. 404, 413, 14 Pac. Rep. 347; Patterson v. Tarbell, 26 Oreg. 29, 35, 37 Pac. Rep. 76.

[21] Harris v. Equator Min. & S. Co., 8 Fed. Rep. 863, 12 Morr. Min. Rep. 178. See Patchen v. Keeley, 19 Nev. 404, 413, 14 Pac. Rep. 347 (sustaining an action by such a locator against a trespasser not attempting to locate).

but as against a valid location, possession without location cannot prevail.[22]

§ 11. **Effect of valid location.** The valid location of a mining claim excludes from every part of the ground covered thereby, as long as such location is subsisting, any junior location, or a possibility of acquiring any rights under such junior location, for the reason that two locations cannot legally occupy the same surface at the same time.[23]

A mineral location founded on actual discovery of a valuable deposit of mineral within the limits of the claim, and maintained in accordance with the mining laws and local regulations applicable thereto, excepts the land covered thereby from the operation of a withdrawal for irrigation purposes made under the provisions of the act of June 17, 1902.[24]

§ 12. **Actual possession need not be maintained.** Maintaining actual possession of a mining claim is not necessary to the validity of the claim, or rights therein granted by the acts of Congress.[25]

§ 13. **Lapse of time as affecting valid location.** It does not affect the validity of a mining claim that many years have elapsed since its original location without the issuance of a patent therefor.[26]

§ 14. **Location subject to railroad right of way.** A mining location on land to which the right of way of a railroad company has attached is subject to the easement of the railroad company.[27]

[22] Noyes v. Black, 4 Mont. 527, 2 Pac. Rep. 769. See also Lebanon Min. Co. v. Consolidated Rep. Min. Co., 6 Colo. 371; Patchen v. Keeley, 19 Nev. 404, 413, 14 Pac. Rep. 347. See **Kerr's Cyc. Code Civ. Proc. Cal.**, §§ 321 to 329, and exhaustive notes.

[23] Porter v. Tonopah North Star T. & D. Co., 133 Fed. Rep. 756.

[24] Instructions Director of the Geological Survey, 32 Land Dec. 387.

[25] McFeters v. Pierson, 15 Colo. 201, 22 Am. St. Rep. 388, 24 Pac. Rep. 1076; Oscamp v. Crystal River Min. Co., 58 Fed. Rep. 293, 294, 7 C. C. A. 233; Zerres v. Vanina, 134 Fed. Rep. 618; Belk v. Meagher, 104 U. S. 279, bk. 26 L. ed. 735, 1 Morr. Min. Rep. 510.

[26] Clipper Min. Co. v. Eli Min. & L. Co., 194 U. S. 220, bk. 48 L. ed. 944, 24 Sup. Ct. Rep. 632.

[27] Bonner v. Rio Grande S. R. Co., 31 Colo. 446, 72 Pac. Rep. 1065.

CHAPTER II.

MINERS' RULES AND REGULATIONS.

§ 15. In general.
§ 16. Distinction between general custom and local regulation.
§ 17. Organization of mining districts.
§ 18. Legislative sanction of rules and regulations.
§ 19. Regularity of enactment.
§ 20. Subject-matter of rules and regulations.
§ 21. Requisites of rules and regulations.
§ 22. Must not conflict with statute laws.
§ 23. Must be complied with.
§ 24. Penalty for non-compliance.
§ 25. Proof of rules and regulations.
§ 26. Same. Presumption of continuance.
§ 27. Same. Best evidence.
§ 28. Same. Documentary evidence.
§ 29. Same. Parol evidence.
§ 30. Averment not necessary.
§ 31. Construction of rule or regulation.

§ 15. In general. Prior to the time of the enactment of the Federal mining laws there had sprung up throughout the mining regions of the mining states local customs and usages by which persons engaged in mining were governed in the acquisition, use, and forfeiture or loss, of mineral lands. It should be noticed here, perhaps, that the word "forfeiture" is not used in its common-law sense, but in its mining-law sense as used and understood by the miners who were the framers of our mining customs, regulations, and laws. These customs differed in different localities, and varied to a greater or less extent, according to the character of the mines. They prescribed the acts by which the right to mine a particular piece of ground could be secured, and its use and enjoyment continued and preserved; and by what non-action on the part of the appropriator such right should become forfeited and lost, and the ground become, as at first, publici juris, and open to the appropriation of the next comer. They were few, plain, and simple, and well under-

stood by those with whom they originated. They were well adapted to secure the end designed to be accomplished, and were adequate to the judicial determination of all controversies touching mining rights. These customs and usages were the fruit of the times, demanded by the necessities of the communities, which, though living under the common law, could find therein no clear and well-defined rules for their guidance applicable to the new conditions by which they were surrounded, and were forced to depend upon remote analogies of doubtful application and unsatisfactory results.[1]

These rules and customs, naturally, and from the fact that they were the only legislation, if they might be properly so termed, by which the miners, in the acquisition and use of mines and mining claims, were governed prior to the passage of the Federal mining laws, were very generally respected, and were applied not only by the miners themselves, but also by the courts;[2] and, indeed, they have been spoken of by many of the courts as the common law of mining.[3]

§ 16. Distinction between general custom and local regulation. A general custom, whether existing anterior to the

[1] See Morton v. Solambo Copper Min. Co., 26 Cal. 527, 532, 533, 4 Morr. Min. Rep. 463.

[2] **For some cases in which such customs and regulations were referred to and applied,** see:

U. S. North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 524, 529; Forbes v. Gracey, 94 U. S. 762, bk. 24 L. ed. 313, 14 Morr. Min. Rep. 183.

Ariz. Rush v. French, 1 Ariz. 99, 25 Pac. Rep. 816.

Cal. English v. Johnson, 17 Cal. 107, 76 Am. Dec. 574, 12 Morr. Min. Rep. 202; Brown v. '49 & '56 Quartz Min. Co., 15 Cal. 152, 76 Am. Dec. 468, 9 Morr. Min. Rep. 600; Morton v. Solambo Copper Min. Co., 26 Cal. 527, 532, 4 Morr. Min. Rep. 463; St. John v. Kidd, 26 Cal. 263, 272, 4 Morr. Min. Rep. 454.

Nev. Mallett v. Uncle Sam Gold & S. Min. Co., 1 Nev. 188, 90 Am. Dec. 484, 1 Morr. Min. Rep. 17; Golden Fleece Gold & S. Min Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120.

[3] **U. S.** North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 524, 529.

Cal. English v. Johnson, 17 Cal. 107, 76 Am. Dec. 574, 12 Morr. Min. Rep. 202; Morton v. Solambo Copper Min. Co., 26 Cal. 527, 528, 4 Morr. Min. Rep. 463.

Mont. King v. Edwards, 1 Mont. 235, 4 Morr. Min. Rep. 480.

Nev. Mallett v. Uncle Sam Gold & S. Min. Co., 1 Nev. 188, 90 Am. Dec. 484, 1 Morr. Min. Rep. 17.

location of the claim in question or not, may be given in evidence upon the question of extent; but a mere local regulation stands upon a different footing. The former results from the general sense of the mining community as to what is just and reasonable in that respect, and, in connection with the particular circumstances of the case, may be safely relied upon in arriving at a conclusion. The latter owes its origin to the will and discretion of a few individuals, and, operating directly upon the location sought to be limited, would be an improper and unjust criterion of action, and hence cannot be introduced to affect the validity of a claim acquired previous to its establishment, since, in many cases, its effect would be to deprive a person of property to which, prior to its adoption, he had a valid legal right.[4]

§ 17. **Organization of mining districts.** In respect to the organization of mining districts, and the mode thereof, there seems to be no legislation, except in Wyoming.[5]

The question seems never to have come before the courts, so far as an examination of the cases shows. As will be subsequently seen, formality or regularity of enactment of the rules and regulations seems not to have been important; and the same might be said of the organization of the district. The number of the residents in the district participating in the organization was a matter of no consequence. Nor does formality seem to have been essential. Indeed, it might truthfully be said that the only things necessary to be done were some sort of formal organization, the fixing of the limits of the district, and the election of a recorder, whereupon the district was said to be duly organized, with authority to adopt appropriate rules and regulations.[6]

[4] Table Mountain Tunnel Co. v. Stranahan, 20 Cal. 198, 9 Morr. Min. Rep. 457. See also Table Mountain Tunnel Co. v. Stranahan, 31 Cal. 387, 9 Morr. Min. Rep. 457, 465.

[5] Wyo. Rev. Stats. 1899, §§ 2533, 2534, embodying the statute as originally enacted in 1888, Laws 1888, p. 83.

[6] Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120.

§ 18. Legislative sanction and recognition of rules and regulations. When Congress enacted the Federal mining laws, not only in 1866, but also up to the present time, the power of the miners to make rules and regulations for their own government was not only not taken away, but the existing rules were ratified, and express power was given to adopt other rules, subject only to the restriction that such rules and regulations should not conflict with the laws of the United States, or of the state or territory wherein the district in question might be located.[7] But, in order that mining claims may be held and government title acquired, it is not essential that mining districts shall be organized and local rules adopted; all that the government requires to be done in order to obtain title, or license to occupy, is prescribed by law, and, in the absence of local rules, a compliance with the public law will secure the claim. The miners in their respective districts may, if they choose, exact something more, but they are not obliged to do so, and no court, in the absence of proof, will presume that they have done so.[8]

[7] U. S. Rev. Stats., § 2324; 5 Fed. Stats. Ann., p. 18.

For cases in which this question is discussed, and the rules and regulations referred to, see:

U. S. Erhardt v. Boaro, 113 U. S. 537, bk. 28 L. ed. 1116, 5 Sup. Ct. Rep. 565, 4 Morr. Min. Rep. 432; Noonan v. Caledonia Gold Min. Co., 121 U. S. 393, bk. 30 L. ed. 1061, 7 Sup. Ct. Rep. 911; St. Louis Smelt. & R. Co. v. Kemp, 104 U. S. 636, bk. 26 L. ed. 313, 875, 11 Morr. Min. Rep. 673; Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, bk. 32 L. ed. 172, 8 Sup. Ct. Rep. 1214, 17 Morr. Min. Rep. 127; Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266; Butte City Water Co. v. Baker, 196 U. S. 119, bk. 49 L. ed. 409, 25 Sup. Ct. Rep. 211; Jackson v. Roby, 109 U. S. 440, bk. 27 L. ed. 990, 3 Sup. Ct. Rep. 301; Zerres v. Vanina, 134 Fed. Rep. 610.

Ariz. Watervale Min. Co. v. Leach, 4 Ariz. 34, 33 Pac. Rep. 418, 17 Morr. Min. Rep. 568.

Cal. Morton v. Solambo Copper Min. Co., 26 Cal. 527, 4 Morr. Min. Rep. 463; Packer v. Heaton, 9 Cal. 569, 4 Morr. Min. Rep. 447; Bradley v. Lee, 38 Cal. 362, 4 Morr. Min. Rep. 470.

Mont. Upton v. Larkin, 7 Mont. 449, 17 Pac. Rep. 728, 15 Morr. Min. Rep. 404.

Nev. Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120.

[8] Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120.

§ 19. **Regularity of enactment.** A mining regulation adopted at a miners' meeting does not, like a statute, acquire validity by the mere enactment, but from the customary obedience and acquiescence of the miners following the enactment.[9] Hence the regularity of the enactment of district mining rules or regulations is a matter into which the courts will not inquire; the fact that they are in force and generally observed is sufficient on that question.[10]

§ 20. **Subject-matter of rules and regulations.** Subject, of course, to the qualification that local rules and regulations must not conflict with the Federal mining laws or with those of the state or territory wherein the district is located, they may provide for claims of smaller size than those allowed by the Federal laws;[11] require more thorough marking of the claim than is required by the Federal laws; require location-work when not required by statute;[12] provide for the election of a recorder; and require claims to be recorded.[13]

§ 21. **Requisites of rules and regulations.** A mining rule or custom cannot rest on inference or presumption, but must be clear and positive in its character.[14] It must, in order to be valid, be reasonable.[15]

[9] Harvey v. Ryan, 42 Cal. 626, 4 Morr. Min. Rep. 490. See also North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529.

[10] Gore v. McBrayer, 18 Cal. 582, 1 Morr. Min. Rep. 645; Pralus v. Pacific G. & S. Min. Co., 35 Cal. 30, 12 Morr. Min. Rep. 478; Harvey v. Ryan, 42 Cal. 626, 4 Morr. Min. Rep. 490; Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120. See also Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, bk. 32 L. ed. 172, 8 Sup. Ct. Rep. 1214, 17 Morr. Min. Rep. 127.

[11] Parley's Park Silver Min. Co. v. Kerr, 130 U. S. 256, bk. 32 L. ed. 906, 9 Sup. Ct. Rep. 511, 17 Morr. Min. Rep. 201, wherein a regulation diminishing the surface width of mining claims from three hundred feet on each side of the middle of the vein to twenty feet on each side thereof was recognized as valid.

[12] As, for example, where a local regulation requires a discovery-shaft: Northmore v. Simmons, 97 Fed. Rep. 386, 38 C. C. A. 211.

[13] For the language of the Federal statute in relation to miners' rules and regulations, see post, pt. II, ch. I.

[14] Flaherty v. Gwinn, 1 Dakota 509, 12 Morr. Min. Rep. 605.

[15] Woodruff v. North Bloomfield Gravel Min. Co., 18 Fed. Rep. 753, 9 Sawy. C. C. 441. See also Beatty v. Gregory, 17 Iowa 109, 85 Am. Dec. 546, 9 Morr. Min. Rep. 234.

It must be uniform, and not fluctuating, in its operation; that is to say, it must be binding upon all in the district.[16] But no particular length of time is necessary to establish it.[17] A mining custom may be proved, however recent the date or short the duration of its establishment.[18]

§ 22. **Must not conflict with statute laws.** In addition to the foregoing requisites enumerated, the rule or custom must not be in conflict with either the Federal mining laws or those of the state or territory wherein the mining district is located.[19] And where a mining regulation conflicts with statute law, the latter controls; the former must give way.[20]

Perhaps the most notable of the customs conflicting with the statute law was the custom giving the first locator of mining-ground the right to permit tailings to run free in the gulch, thereby rendering valueless the mining claims of subsequent locators below them. It was fairly decided that such a custom conflicts with the provision of the mining law requiring the boundaries of a mining claim, for the purpose of depositing tailings, to be distinctly marked by

[16] Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411. See also Beatty v. Gregory, 17 Iowa 109, 85 Am. Dec. 546, 9 Morr. Min. Rep. 234.

[17] Beatty v. Gregory, 17 Iowa 109, 85 Am. Dec. 546, 9 Morr. Min. Rep. 234.

To be valid, the regulation must not only be established or enacted, but must be in force at the time and place: Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

[18] Smith v. North American Min. Co., 1 Nev. 423, 13 Morr. Min. Rep. 599.

[19] **U. S.** Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Woodruff v. North Bloomfield Gravel Min. Co., 18 Fed. Rep. 753, 802, 9 Sawy. C. C. 441; Hammer v. Garfield Min. & M. Co., 130 U. S. 291, bk. 32 L. ed. 964, 9 Sup. Ct. Rep. 548, 16 Morr. Min. Rep. 125.

Colo. Becker v. Pugh, 9 Colo. 589, 13 Pac. Rep. 906, 17 Colo. 243, 29 Pac. Rep. 173, 15 Morr. Min. Rep. 304.

Mont. Boucher v. Mulverhill, 1 Mont. 306, 12 Morr. Min. Rep. 350.

N. M. Eberle v. Carmichael, 8 N. M. 169, 42 Pac. Rep. 95.

[20] Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 167 U. S. 108, bk. 42 L. ed. 96, 17 Sup. Ct. Rep. 762, 18 Morr. Min. Rep. 661; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Woodruff v. North Bloomfield Gravel Min. Co., 18 Fed. Rep. 753, 9 Sawy. C. C. 441; Williams and Kellinger Original Co. v. Winthrop Min. Co., 60 Cal. 631.

the locators, in order that subsequent locators may know what ground is vacant.[21] As was said by the Montana supreme court in a case[22] involving this question, "To support this doctrine of free tailings by custom would be to allow a few miners or flume companies to go into the head of a mining-gulch and prevent perhaps miles of valuable mining-ground below them from being taken up and developed; because no one could tell, if they located below, how soon their ground would be entirely covered up and destroyed, under this custom of free tailings. Such a mining custom would be in contravention of the leading principle, that customs must not be inconsistent with the full and rapid development of all the mining resources of the country; for the miners of a district might as well take possession of a large gulch and establish the regulation that each claim should be five thousand feet up and down the gulch in size, as to put a few flumes in at the head of a gulch, and, under the contended-for custom of free tailings, not allow them to be cribbed, and thereby prevent rich mining-ground, for miles below, from ever being worked or developed."

The California supreme court has said that the owner of a mine unquestionably has the right to work his claim, but the same right belongs to the owner of every other claim on the stream. The channel of the stream is the natural and necessary outlet for all, and no one has, as against the others, the right to its exclusive use for that purpose. The recognition of such a right would be in violation of every principle of legal justice. The true rule is, that each person mining in the same stream is entitled to use, in a proper and reasonable manner, both the channel of the stream and the water flowing therein; and where, from the situation of the different mining claims, the working of some will necessarily result in injury to others, if the injury be the natural and necessary consequence of the exercise of this right, it will be damnum absque injuria, and will

[21] See Otahelte G. & S. Min. & M. Co. v. Dean, 102 Fed. Rep. 929; Woodruff v. North Bloomfield Gravel Min. Co., 18 Fed. Rep. 753, 9 Sawy. C. C. 441.

[22] Lincoln v. Rodgers, 1 Mont. 217, 14 Morr. Min. Rep. 79.

furnish no cause of action to the injured party. The reasonableness of the use is a question for the jury, to be determined by them upon the facts and circumstances of each particular case.[23]

§ 23. **Must be complied with.** When the local rules and customs of a mining district are reasonable, and not in conflict with the statute law, Federal or state, they become part of the law of the land, and must be complied with.[24]

A substantial compliance with mining customs, where good faith is shown, is sufficient, and a custom regulating the notice of location, which is chiefly valuable as a temporary protection to the locator, should receive a liberal, and not a strict, construction, when invoked years after all other acts of location have been done.[25]

It will be presumed, in the absence of evidence to the contrary, that parties holding mining claims hold them according to the local rules and customs of the miners of the district.[26]

§ 24. **Penalty for non-compliance.** The failure of a party to comply with a mining rule or regulation cannot work a forfeiture, unless the rule itself so provides.[27]

[23] Esmond v. Chew, 15 Cal. 137, 5 Morr. Min. Rep. 175. See also Gregory v. Harris, 43 Cal. 38, 14 Morr. Min. Rep. 91; Stone v. Bumpus, 46 Cal. 218, 4 Morr. Min. Rep. 278.

[24] **U. S.** North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529.

Cal. Pralus v. Jefferson G. & S. Min. Co., 34 Cal. 558, 12 Morr. Min. Rep. 473; Dutch Flat Water Co. v. Mooney, 12 Cal. 534, 6 Morr. Min. Rep. 303.

Colo. Consolidated Repub. Mt. Min. Co. v. Lebanon Min. Co., 9 Colo. 343, 12 Pac. Rep. 212, 15 Morr. Min. Rep. 490; Becker v. Pugh, 9 Colo. 589, 13 Pac. Rep. 906, 15 Morr. Min. Rep. 304.

Mont. Robertson v. Smith, 1 Mont. 410, 7 Morr. Min. Rep. 196; Gropper v. King, 4 Mont. 367, 1 Pac. Rep. 755.

Nev. Gleeson v. Martin White Min. Co., 13 Nev. 442, 9 Morr. Min. Rep. 429.

[25] Donahue v. Meister, 88 Cal. 121, 25 Pac. Rep. 1096, 22 Am. St. Rep. 283.

[26] Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, bk. 32 L. ed. 172, 8 Sup. Ct. Rep. 1214, 17 Morr. Min. Rep. 127; Robertson v. Smith, 1 Mont. 410, 7 Morr. Min. Rep. 196.

[27] Johnson v. McLaughlin, 1 Ariz. 493, 4 Pac. Rep. 130; Emerson v. McWhirter, 133 Cal. 510, 65 Pac. Rep. 1036, 21 Morr. Min. Rep. 470.

§ 25. **Proof of rules and regulations.** The existence of miners' rules or regulations is a fact of which the courts cannot take judicial notice, but they must, as any other fact in issue, be established by competent evidence.[28]

§ 26. **Same. Presumption of continuance.** But mining rules and customs, once shown to exist, are presumed to continue in force until the contrary is shown.[29]

In Idaho [30] it has been held that a written regulation, once established, is presumed still to exist and to have the force of law, and is, by section 486 of the Idaho Code of Civil Procedure, made evidence in actions concerning mining claims, and when not in conflict with statutory law must govern the decision of the court in the action.

§ 27. **Same. Best evidence.** Where a mining rule or regulation is shown to be in writing, the best evidence of such rule or regulation is the writing itself, and secondary evidence thereof should not be resorted to until a proper foundation therefor has been laid.[31]

See also Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

Contra: King v. Edwards, 1 Mont. 235, 4 Morr. Min. Rep. 480; Mallett v. Uncle Sam Gold & S. Min. Co., 1 Nev. 188, 90 Am. Dec. 484, 1 Morr. Min. Rep. 17; Sisson v. Sommers, 24 Nev. 379, 55 Pac. Rep. 829, 77 Am. St. Rep. 815, 19 Morr. Min. Rep. 644. See Purdum v. Laddin, 23 Mont. 387, 59 Pac. Rep. 153.

[28] **U. S.** North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529; Parley's Park Silver Min. Co. v. Kerr, 130 U. S. 256, bk. 32 L. ed. 906, 9 Sup. Ct. Rep. 511, 17 Morr. Min. Rep. 201.

Cal. Table Mountain Tunnel Co. v. Stranahan, 20 Cal. 198, 9 Morr. Min. Rep. 457.

Mont. King v. Edwards, 1 Mont. 235, 4 Morr. Min. Rep. 480.

Nev. Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120; Poujade v. Ryan, 21 Nev. 449, 33 Pac. Rep. 659.

[29] North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Riborado v. Quang Pang Min. Co., 2 Idaho 131, 6 Pac. Rep. 125.

[30] Riborado v. Quang Pang Min. Co., 2 Idaho 131, 6 Pac. Rep. 125.

[31] Campbell v. Rankin, 99 U. S. 261, bk. 25 L. ed. 435, 12 Morr. Min. Rep. 257; English v. Johnson, 17 Cal. 107, 76 Am. Dec. 574, 12 Morr. Min. Rep. 202.

§ 28. **Same. Documentary evidence.** Where it is contended that a custom existed, requiring a locator to measure off and designate the boundaries of a claim by stakes on the ground, enter upon the same, and cause a record of the location to be made in the county recorder's office, a book kept in such office, consisting of the records of various claims, amongst which, and the first in order of registration, was the record of the claim in question, may be introduced as tending to establish the custom asserted.[32]

In order to introduce the written local mining laws of a district, it is necessary that it shall appear aliunde that the copy comes from a proper depositary, and that such person was empowered to give certified copies, so as to become evidence, and that the copy offered was a copy of the laws prevailing and in force in the district at the time in question.[33]

§ 29. **Same. Parol evidence.** Parol evidence of mining laws and customs may be given, where there is some doubt as to whether they were in force at the time when they are sought to be applied to the facts in the case.[34]

§ 30. **Averment not necessary.** In support of title, evidence of mining rules and customs may be given without averring such rules and customs.[35]

§ 31. **Construction of rule or regulation.** The construction of the rule or regulation is a question of law for the court.[36]

[32] Pralus v. Pacific G. & S. Min. Co., 35 Cal. 30, 12 Morr. Min. Rep. 478. See also Orr v. Haskell, 2 Mont. 225, 4 Morr. Min. Rep. 492.

[33] Roberts v. Wilson, 1 Utah 292, 4 Morr. Min. Rep. 498. See also Harvey v. Ryan, 42 Cal. 626, 4 Morr. Min. Rep. 490.

[34] Colman v. Clements, 23 Cal. 245, 5 Morr. Min. Rep. 247.

[35] Colman v. Clements, 23 Cal. 245, 5 Morr. Min. Rep. 247; Jacob v. Day, 111 Cal. 571, 576, 44 Pac. Rep. 243.

[36] Ralston v. Plowman, 1 Idaho 595, 5 Morr. Min. Rep. 160. See also English v. Johnson, 17 Cal. 107, 76 Am. Dec. 574, 12 Morr. Min. Rep. 202.

CHAPTER III.

STATUTES.

§ 32. Federal statutes.
§ 33. Alaska statutes.
§ 34. State statutes.
§ 35. Same. Must be merely supplemental.
§ 36. Same. Must be complied with.

§ 32. Federal statutes. In the acquisition of foreign territory since the establishment of this government, the great body of lands acquired became the property of the United States, and are known as "public lands." By virtue of this ownership of the soil, the title to all mines and minerals beneath the surface also vested in the government. For nearly a century there was practically no legislation on the part of Congress looking to the disposal of mines or mineral lands. The statute of July 26, 1866,[1] was the first general statute providing for the conveyance of mines and minerals. Previous to that time, it is true, there had been some legislation respecting the leasing of mines.[2] Notwithstanding there was no general legislation on the part of Congress previous to 1866, the fact of explorers searching the public domain for mines and their possessory rights to the mines because of their discovery was generally recognized, and the rules and customs of miners in any particular district were enforced as valid. As was said by the United States supreme court in an early case, "We know, also, that the territorial legisla-

[1] Stats. at L., 251, ch. 262.

[2] As, for example, the act of March 3, 1807, ch. 49, § 5, 2 Stats. at L. 448, authorizing the President to lease any lead-mines in Indiana Territory for a term not exceeding five years; the act of March 3, 1829, ch. 5, 4 Stats. at L. 364, act of July 11, 1846, ch. 36, 9 Stats. at L. 37; also such legislation as is found in the act of February 27, 1865, ch. 64, 13 Stats. at L. 440, and of May 5, 1866, ch. 73, 14 Stats. at L. 43; and the act of July 25, 1866, ch. 244, 14 Stats. at L. 242, granting to A. Sutro and his assigns certain privileges to aid in the construction of a tunnel, and conferring on the grantees the right of pre-emption of lodes within two thousand feet of each side of the said tunnel.

ture has recognized by statute the validity and binding force of the rules, regulations, and customs of the mining districts. And we cannot shut our eyes to the public history, which informs us that under this legislation, and not only without interference by the national government, but under its implied sanction, vast mining interests have grown up, employing many millions of capital, and contributing largely to the prosperity and improvement of the country." [3]

The patents issued under the statute of 1866, as might be expected, described surface areas very different and sometimes irregular in form. Often they were like a broom, there being allowed for the discovery-shaft an amount of ground large enough for the convenient working of the mine, and an independent strip extending therefrom as the handle of a broom. This strip might be straight, or in a curved or irregular line, following out what was supposed to be the course of the vein.

Where there were local rules giving to the discoverer of a mine possessory rights in a certain area of surface, the patent followed those rules, and conveyed a similar area. Even under the statute of 1866, although its expressed purpose was primarily to grant the single vein, yet the rights of the patentee beneath the surface were limited and controlled by his rights on the surface. If in fact, as shown by subsequent exploration, the vein, in its course or strike, departed from the boundary lines of the surface location, the point of departure was the limit of the right. In other words, the patentee was not entitled to the claimed and patented number of feet, irrespective of the question whether the vein, in its course, departed from the lines of the surface location. The litigation in respect to the Flagstaff mine, in Utah, illustrates this. In that case, it appeared that a local custom gave to the locator of a mine fifty feet in width on either side of the course of the vein, and the Flagstaff patent granted a superficies, one hundred feet in width by two

[3] Sparrow v. Strong, 70 U. S. (3 Wall.) 97, bk. 18 L. ed. 49, 2 Morr. Min. Rep. 320. See also Forbes v. Gracey, 94 U. S. 762, bk. 24 L. ed. 313, 14 Morr. Min. Rep. 183; Jennison v. Kirk, 98 U. S. 453, bk. 25 L. ed. 240, 4 Morr. Min. Rep. 504.

thousand six hundred feet long, with the right to follow the vein described therein to the extent of two thousand six hundred feet. It turned out that the vein, instead of running through this parallelogram lengthwise, crossed the side lines, so there was really but one hundred feet of the length of the vein within the surface area. On either side of the Flagstaff ground were other locations, through which the vein, in its course, passed. As against these two locations, the owners of the Flagstaff mine claimed the right to follow the vein, in its course or strike, to the full extent of two thousand six hundred feet. This was denied by the supreme court of Utah.[4] The controversy was with the locator on the west of the Flagstaff mine. The decision of that court was in respect to the controversy with the locator of the east of the Flagstaff, but the case went to the supreme court of the United States,[5] where the court, in the course of their opinion, said: "It was not the sense of the law to allow a person to make his location crosswise of a vein so that the side lines shall cross it and thereby give him the right to follow the strike of the vein outside of his side lines. That would subvert the whole system sought to be established by the law. If he does locate his claim in that way, his rights must be subordinated to the rights of those who have properly located on the lode. Their right to follow the dip outside of their side lines cannot be interfered with by him. His right to the lode only extends to so much of the lode as his claim covers. If he has located crosswise of the lode and his claim is only one hundred feet wide, that one hundred feet is all he has a right to."

These decisions show that while the express purpose of the statutes was to grant the vein for so many feet along its course, yet such grant can only be made effective by a previous location covering the course to such an extent.[6]

[4] McCormick v. Varnes, 2 Utah 355, 9 Morr. Min. Rep. 505.

[5] Flagstaff Silver Min. Co. v. Tarbet, 98 U. S. 463, bk. 25 L. ed. 253, 9 Morr. Min. Rep. 607.

[6] See Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370, where this question is reviewed at considerable length by Mr. Justice Brewer.

For cases construing and applying the early California statutes

This act of 1866 was in force only six years, as originally enacted, and was then superseded by the act of May 10, 1872,[7] found in the United States Revised Statutes, sections two thousand three hundred and nineteen et seq. This is the statute that is in force at the present time, except so far as it has been amended by subsequent acts, fully set forth in another part of this work, and under which the current litigation over mining claims usually arises.

§ 33. Alaska statutes. In 1884, Congress, by an act passed May 17th,[8] creating a land district of the district of Alaska, provided that the Federal legislation relating to mining claims and the rights incident thereto were to be in full force and effect in that district, subject to the rules made by the Secretary of the Interior and approved by the President, and that parties who had located mines and acquired mineral privileges in the district under the Federal laws applicable to the public domain, or who had occupied and improved or exercised rights of ownership over such claim, were not to be disturbed, but were to be allowed to perfect their title to such claim in the manner provided therein. The effect of this statute was to guarantee, not only to parties who had located mining claims under the Federal laws, but also to those who had occupied, improved, or exercised acts of ownership over such claims, the rights to perfect their title.

The purpose of Congress, in this act, obviously, was to secure to those parties who were in actual possession of mineral claims in the territory of Alaska the privilege of acquiring a full title thereto, notwithstanding their failure to take all the steps required by the general mining laws of the United States with reference to location of such claims. It was to be expected that, owing to the primitive conditions, and in the absence of a government survey, and

In relation to mining, see People ex rel. Attorney-General v. Naglee, 1 Cal. 232, 52 Am. Dec. 312; People v. Coleman, 4 Cal. 46, 60 Am. Dec. 581; Ex parte Ah Pong, 19 Cal. 106; Lin Sing v. Washburn, 20 Cal. 534; Ah Yew v. Choate, 24 Cal. 562, 1 Morr. Min. Rep. 492.

[7] 17 Stats. at L. 91, ch. 152; 5 Fed. Stats. Ann., pp. 4 et seq.

[8] 23 Stats. at L. 24, ch. 53.

perhaps of persons competent to make accurate surveys, many irregularities and imperfections would exist, and Congress intended that the possessors should be secured in their possession, and be permitted to perfect a title to the property possessed. And it was accordingly held proper to introduce in evidence a location-certificate, although defective in form, for the purpose of showing the time when possession was taken, and to point out, so far as it did, the property of which possession was taken.[9]

But the act of Congress of June 6, 1900, making further provisions for a civil government of Alaska, provides for the establishment of recording districts and the recording of mining locations, for the making of rules and regulations by the miners and for the registration of mining records, for the extension of mining laws to the district of Alaska, and for the exploration and mining of tide-lands and lands below low tide.[10]

§ 34. State statutes. The Federal statutes governing the location of mining claims, while not conferring that direct grant of authority to the state to legislate respecting locations that is granted to miners to make regulations, evince, nevertheless, a clear recognition of the right to so legislate, in a manner not conflicting with the constitution and laws of the United States. Such legislation is not invalid as an exercise of power which cannot be delegated by Congress. The Federal statute savors "somewhat of mere rules prescribed by an owner of property for its disposal. It is not of a legislative character in the highest sense of the term."[11] And most of the mining states and territories have enacted such statutes.[12]

[9] Bennett v. Harkrader, 158 U. S. 441, bk. 39 L. ed. 1046, 15 Sup. Ct. Rep. 863, 18 Morr. Min. Rep. 224.

[10] Regulations and Instructions, 32 Land Dec. 424, 446. And see pt. II, ch. 1.

[11] Butte City Water Co. v. Baker, 196 U. S. 119, bk. 49 L. ed. 409, 25 Sup. Ct. Rep. 211; Mares v. Dillon, 30 Mont. 117, 75 Pac. Rep. 963.

[12] **For cases construing and applying state legislation,** see:

U. S. North Bloomfield Gravel Min. Co. v. United States, 88 Fed. Rep. 664, 32 C. C. A. 84.

§ 35. Same. Must be merely supplemental. Such state legislation must be strictly supplemental, and be confined within the limits within which Congress has given the state legislative power.[13] State legislation, supplemental to the acts of Congress, which prescribes the method to be pursued by a locator as a condition precedent to making a valid appropriation of the public lands of the United States containing valuable mineral deposits, is designed as a rule of evidence only, to determine the rights of an adverse claimant of the premises, under a subsequent location thereon of a mining claim. This must, upon principle, be the object of such laws, otherwise the enactments, in case no adverse claim is interposed, would be an interference with the primary disposal of the soil by a state, which is inhibited by the enabling act by which it became a part of the Union. Congress has impliedly invited miners to adopt rules and regulations, and, in the same manner, requested state and territorial legislatures to enact laws protecting the rights of claimants of mineral lands, which rules and laws are recognized, when not in conflict with the Federal statute, and enforced by the courts in cases involving a contest. And it has been declared, in a recent case, that although a statute, as in the case of Oregon, has prescribed certain conditions which must be performed in order properly to locate a mining claim, and provides that a failure to comply

Ariz. Johnson v. McLaughlin, 1 Ariz. 493, 4 Pac. Rep. 130.

Cal. Lacy v. Gunn, 144 Cal. 511, 78 Pac. Rep. 30; Dwinnell v. Dyer, 145 Cal. 12, 78 Pac. Rep. 247.

Colo. People ex rel. v. District Court, 11 Colo. 147, 17 Pac. Rep. 298.

And see also the various succeeding chapters, where the particular statutes are referred to.

[13] **U. S.** Hoyt v. Russell, 117 U. S. 401, bk. 29 L. ed. 914, 6 Sup. Ct. Rep. 881; Campbell v. Ellet, 167 U. S. 116, bk. 42 L. ed. 101, 17 Sup. Ct. Rep. 765, 18 Morr. Min. Rep. 669.

Cal. Harris v. Kellogg, 117 Cal. 484, 49 Pac. Rep. 708.

Colo. Taylor v. Parenteau, 23 Colo. 368, 48 Pac. Rep. 505, 18 Morr. Min. Rep. 534.

Mont. Sanders v. Noble, 22 Mont. 110, 55 Pac. Rep. 1037, 19 Morr. Min. Rep. 650.

Nev. Sisson v. Sommers, 24 Nev. 379, 55 Pac. Rep. 829, 77 Am. St. Rep. 815, 19 Morr. Min. Rep. 644.

Utah. In re Monk, 16 Utah 100, 50 Pac. Rep. 810.

therewith shall annul every attempted location, the statute is evidently designed as a guide only to determine the rights of conflicting claimants, thus permitting the proper marking of a location at any time before adverse rights attach.[14]

§ 36. **Same. Must be complied with.** State legislation, as well as the Federal statutes, concerning the location of mining claims must be complied with in all respects, in order to make a complete and valid location.[15]

[14] Sharkey v. Candiani (Oreg., 1906), 85 Pac. Rep. 219.

[15] Butte City Water Co. v. Baker, 196 U. S. 119, bk. 49 L. ed. 409, 25 Sup. Ct. Rep. 211; Dwinnell v. Dyer, 145 Cal. 12, 78 Pac. Rep. 247; Hickey v. Anaconda Copper Min. Co., 33 Mont. 46, 81 Pac. Rep. 806.

For application of this rule in respect of the various statutes in the particular matters set out, see, infra, the various chapters dealing therewith.

CHAPTER IV.

LANDS SUBJECT TO EXPLORATION AND APPROPRIATION.

§ 37. In general.
§ 38. States excepted from operation of Federal mining laws.
§ 39. Land must be unappropriated and unoccupied.
§ 40. "Unappropriated" and "unoccupied" defined.
§ 41. Lands not subject to appropriation at time of location.
§ 42. Using adjacent land for development purposes.
§ 43. Lands appropriated as non-mineral.
§ 44. Military reservations.
§ 45. Reservoir sites.
§ 46. Indian reservations.
§ 47. Railroad grants.
§ 48. Grants to states.
§ 49. Town sites.
§ 50. Mexican land grants.
§ 51. Tide-lands.
§ 52. Lands reclaimed by irrigation.

§ 37. In general. The Federal mining laws expressly provide that all valuable mineral deposits in lands belonging to the United States, whether surveyed or unsurveyed, are free, and open to exploration, and the lands in which they are found are open to occupation or purchase, under the rules and regulations provided.[1]

§ 38. States excepted from operation of Federal mining laws. Mineral lands in many of the states, as will be seen by reference to Part II of this work, are expressly excepted from the operation of the Federal mining laws, not only under the act of 1866, but also under that of 1872.

§ 39. Land must be unappropriated and unoccupied. Land must be unappropriated and unoccupied, in order to be subject to appropriation for mining purposes, either by loca-

[1] U. S. Rev. Stats., §§ 2319 et seq.; 5 Fed. Stats. Ann., pp. 4 et seq.

tion or by entry for patent. The surface-ground of the vein or lode must be unappropriated, unoccupied, and the property of the United States.[2]

§ 40. **"Unoccupied" and "unappropriated" defined.** Public lands belonging to the United States, for whose sale, or other disposal, Congress has made provision by its general laws, are regarded as regularly open to entry and sale under such laws, unless some particular lands have been withdrawn from sale by Congressional authority, or by an executive withdrawal under such authority, either express or implied.[3]

To make a valid location, such location must be upon unappropriated mineral land of the government. Where there has been in fact no attempted prior location, the appropriator finds no difficulty in perfecting his location by performing the acts required by law in respect thereto. When, however, a person desiring to make such location finds evidence upon the ground, or has actual knowledge, of an attempted prior location, he may locate such ground himself only if the same is unappropriated public land. Whether or not it is such, depends upon the facts in the case. It may be unappropriated and open to such location, first, by reason of the fact that the prior locator, having made a valid location, has abandoned the ground or has forfeited it. Such ground may be unappropriated public

[2] **U. S.** Walton v. Wild Goose M. & Tr. Co., 123 Fed. Rep. 209, 22 Morr. Min. Rep. 688; Belk v. Meagher, 104 U. S. 279, bk. 26 L. ed. 735, 1 Morr. Min. Rep. 510; Davis v. Wiebbold, 139 U. S. 507, bk. 35 L. ed. 238, 11 Sup. Ct. Rep. 628.

Ariz. Watervale Min. Co. v. Leach, 4 Ariz. 34, 33 Pac. Rep. 418, 17 Morr. Min. Rep. 568.

Cal. Hall v. Arnott, 80 Cal. 348, 22 Pac. Rep. 200.

Colo. Omar v. Soper, 11 Colo. 380, 18 Pac. Rep. 443, 7 Am. St. Rep. 246, 15 Morr. Min. Rep. 496.

Mont. Traphagen v. Kirk, 30 Mont. 562, 77 Pac. Rep. 58.

Nev. Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120.

Utah. Eilers v. Boatman, 3 Utah 159, 2 Pac. Rep. 66, 15 Morr. Min. Rep. 462; Lockhart v. Farrell (Utah, 1906), 86 Pac. Rep. 1077.

Wash. Wheeler v. Smith, 5 Wash. 704, 32 Pac. Rep. 784.

[3] Lockhart v. Johnson, 181 U. S. 516, bk. 45 L. ed. 979, 21 Sup. Ct. Rep. 665.

ground because the prior location was not a valid prior location, and the prior locator therefore never acquired any rights thereunder, and the ground never lost its character as a part of the public domain. When such fact exists, the subsequent locator locates such ground as an original location, and not as abandoned ground.[4]

The terms "unoccupied" and "unappropriated" refer to land that is not in the possession of one who claims the right of possession by virtue of a compliance with law; and land in the possession of one who has made a valid discovery and location is not subject to location by another until after abandonment or forfeiture;[5] the subsequent locator in such case is a trespasser, even though he may have gone on the land for the express purpose of making discovery.[6] Nor is the right of a lessee of an oil-mining claim subject to forfeiture and relocation while he is in actual possession and actively engaged in drilling for oil on the land.[7]

§ 41. Lands not subject to appropriation at time of location. Where a mining claim, at the time of location, was not subject to location, but afterwards became subject thereto, and before such locator filed an amended location thereon the ground was located by another person, no rights are acquired by virtue of the original or amended location.[8] But if, before the discovery of the lode upon which a claim is located, and before the location thereof, that portion of the claim upon which the discovery is made shall have been relinquished to the government, a valid location may be made thereon; and such location vests in the locator all the unappropriated public land within its limits, and every vein whose apex is found in such unappropriated public land within the surface lines of such claim, whether

[4] Cunningham v. Pirrung (Ariz., March 30, 1905), 80 Pac. Rep. 329.

[5] Conn v. Oberto, 32 Colo. 313, 76 Pac. Rep. 368; Lockhart v. Farrell (Utah, 1906), 86 Pac. Rep. 1077.

[6] Peoria & Colo. M. & M. Co. v. Turner, 20 Colo. App. 474, 79 Pac. Rep. 915.

[7] Weed v. Snook, 144 Cal. 439, 77 Pac. Rep. 1023.

[8] Gurney v. Brown, 32 Colo. 472, 77 Pac. Rep. 357; affirmed by United States supreme court, 201 U. S. 184, bk. 50 L. ed. 717.

the surface thus secured is all or only part of the land within the boundary lines of the claim first located.[9]

Cancelation of entry does not restore land to public domain. The cancelation of a mineral application and entry for patent does not, of itself, operate to restore the land to the public domain and render it subject to relocation. It does not divest the patent claimant's title. It simply checks or terminates the patent proceedings. The cancelation of the entry — of the receiver's receipt — is, like its issuance, a mere incident in the proceedings prescribed for procuring title from the government. Although the receiver's receipt, while it remains in force, is evidence of compliance with preliminary patent conditions, yet its revocation, and nothing more, of itself, does not evidence either a forfeiture or relinquishment of the location or claim by the applicant. It has no necessary connection either with the segregation of the land from the public domain, or its restoration thereto.[10] The land department has, however, held that a location, under the mining laws, upon lands covered by a subsisting entry becomes effective upon the cancelation of such entry, if rights thereunder are then being, and are thereafter, asserted under such laws.[11]

§ 42. Using adjacent land for development purposes. The mere use of unappropriated government land as a matter of convenience in the development and working of a mine adjoining, by using the land for the beginning or mouth of a tunnel, and for a dump for material therefrom, for a blacksmith-shop and a carpenter-shop, stable, boiler-house, rail-track, and waste-dump, without any reference to the location, working, or developing the ground as a mining claim, confers no right in such ground to the occupant, against one lawfully locating the same for mining purposes.[12]

[9] Crown Point Min. Co. v. Buck, 97 Fed. Rep. 462, 465, 38 C. C. A. 278.

[10] Peoria & Colo. M. & M. Co. v. Turner, 20 Colo. App. 474, 79 Pac. Rep. 915.

[11] Adams v. Polglase, 32 Land Dec. 477.

[12] Waterloo Min. Co. v. Doe, 56 Fed. Rep. 685, 686, 17 Morr. Min. Rep. 586.

§ 43. **Lands appropriated as non-mineral.** Where an applicant for public lands, under the non-mineral laws, has complied with all the terms and conditions necessary to secure title, he acquires a vested interest in the land, if it is not then known to contain mineral deposits, and is otherwise of a condition and character subject to disposal under the laws under which he seeks title; and thereafter the mining laws have no application to the land, and the applicant is regarded as the equitable owner; the government holds the legal title, in trust, for him, and no subsequent discovery of mineral on the land can impair or in any manner affect his right or title.[13]

§ 44. **Military reservations.** Mineral land may be included in reservations for military purposes, and they are not subject to appropriation by mineral claimants, where such reservation exists; although it has been held that where mining claims have been legally located and held prior to the reservation, the miner's rights cannot be divested by taking the land for military purposes.[14]

§ 45. **Reservoir sites.** A mineral entry based on a location made after the withdrawal of land for a reservoir site, pursuant to a Federal statute, confers no rights on the entryman, although it appears that the entry may be suspended, and if it subsequently develops that the land is not required for reservoir purposes, the entry may then pass to patent.[15]

§ 46. **Indian reservations.** Lands embraced in an Indian reservation are not subject to mining laws, or to mineral exploration and entry.[16] Thus where a treaty with a tribe

[13] Bakersfield Fuel & O. Co. v. Saalburg, 31 Land Dec. 312, where the application was rejected because, at the time of the application, a discovery of mineral had been made therein, the selector not having complied with the terms and conditions necessary to procure title.

[14] Ft. Maginnis, 1 Land Dec. 552.

[15] In re Kolomokas Gold Min. Co., 28 Land Dec. 172.

[16] Mono Fraction Lode Min. Claim, 31 Land Dec. 124; Acme Cement & Pl. Co., 31 Land Dec. 125; McFadden v. Mountain View Min. & M. Co., 97 Fed. Rep. 670, 38 C. C. A. 354; Mountain View Min. &

of Indians sets apart a tract of country for the undisturbed and absolute occupation of the Indians therein named, and for such other friendly tribes or individual Indians as, from time to time, they may be willing, with the consent of the United States, to admit among them, and provides that no persons, except those designated, or such officers, agents, and employees of the government as may be authorized to enter upon Indian reservations in the discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside within the territory described, except as therein otherwise provided, the effect of the treaty is to exclude all intrusion upon mining property in all the territory thus reserved for the Indians. And the intrusion upon and location of mining claims within the territory thus reserved is inoperative to confer any rights upon the locator. But location of the same property by others, after the extinguishment of the title of the Indians, and prior to the relocation of former prohibited claims, gives the right of possession.[17]

Where an attempted location has been made upon Indian land, it is no obstruction to another location, made after the Indian title is extinguished.[18] And a locator in possession on the day the land becomes open to location, with the requisite discovery, with the surface boundaries sufficiently marked, with the notice of location posted, and with a disclosed vein of ore, can, by manifesting his adoption of these existing facts, and subsequently causing a proper record to be made, and by performing the amount of labor or making improvements necessary to hold the claim, date his

M. Co. v. McFadden, 180 U. S. 533, bk. 45 L. ed. 656, 21 Sup. Ct. Rep. 488; Gibson v. Anderson, 131 Fed. Rep. 39, 65 C. C. A. 277; Kendall v. San Juan S. Min. Co., 144 U. S. 658, bk. 36 L. ed. 583, 12 Sup. Ct. Rep. 779, 17 Morr. Min. Rep. 475; French v. Lancaster, 2 Dak. 346, 47 N. W. Rep. 395; Instructions of Secretary of Interior, 31 Land Dec. 178.

[17] Kendall v. San Juan Silver Min. Co., 144 U. S. 658, bk. 36 L. ed. 583, 12 Sup. Ct. Rep. 779, 17 Morr. Min. Rep. 475. This case held that the failure of one locator to record his location after the extinguishment of the Indians' title within the period prescribed by the Colorado statutes, and long after the claim had been located by others, defeated their claim of priority, based upon wrongful entry during the existence of the Indian reservation.

[18] Kendall v. San Juan Silver Min. Co., 9 Colo. 349, 12 Pac. Rep. 198.

rights from that day, and such location, and subsequent labor and improvements, will give him a right to the possession of the claim from and after that day, and thereby prevent a subsequent valid location of the ground by another.[19]

§ 47. Railroad grants. As a general rule, and indeed it may be said to be almost without exception, the grants of lands by Congress to the various railways in aid of their construction have, in express terms, excepted mineral lands from the operation of the grant; and it has been held that it was the intention of Congress to exclude from such grants actual mineral lands, whether known or unknown, and that the exception did not merely extend to such lands as were at the time known to be mineral in their character.[20] But the mere fact that portions of the land contain particles of gold, or veins of gold-bearing quartz-rock, will not necessarily impress it with the character of mineral land, within the meaning of the acts of Congress of July 1, 1862, and July 2, 1864, by which public lands were granted to a certain railway, but reserving from the grant mineral lands.[21] Where, however, an act of Congress[22] provides that, under a previous land grant made, "no patent or other conveyance or title shall be issued or delivered . . . for any lands in such districts until such lands shall have been examined and classified as non-mineral," upon full compliance with the act the issuance of a patent by the United States is conclusive as to the character of the land, in the absence of fraud, imposition, or mistake.[23]

An act of Congress, known as the "right of way act," grants to all railroad companies duly organized the right of

[19] Caledonia Gold Min. Co. v. Noonan, 3 Dak. 189, 14 N. W. Rep. 426.

[20] Barden v. Northern Pac. R. Co., 154 U. S. 288, bk. 38 L. ed. 992, 14 Sup. Ct. Rep. 1030 (of the holding of grants to the Northern Pacific Company). See also Winscott v. Northern Pac. R. Co., 17 Land Dec. 274.

Compare: Francoeur v. Newhouse, 40 Fed. Rep. 618, 620.

[21] Alford v. Barnum, 45 Cal. 482, 10 Morr. Min. Rep. 422.

[22] As by act of February 27, 1895, ch. 136, § 7.

[23] Traphagen v. Kirk, 30 Mont. 562, 77 Pac. Rep. 58. See also Cowell v. Lammers, 21 Fed. Rep. 200.

way through public lands. Section four of that statute provides that any railroad company desiring to secure the benefits of the act shall, within a certain time after the location of any section of a certain portion of its road, and under certain conditions, file with the register of the United States land-office for the local district, a profile of its road; and upon approval thereof by the Secretary of the Interior, the same shall be noted upon the plats of the local office; and thereafter all such lands over which the right of way shall pass shall be disposed of subject to that right of way.[24] As will be noted by reference to another part of this work, the locators of all mining locations have the exclusive right of possession and enjoyment of all the surface included within the lines of their location. And in a recent California case [25] it was held that until the filing of a right-of-way map definitely locating the right of way of a railway, and its approval by the Secretary of the Interior, as provided by section four of the statute referred to, the lands covered by the map were subject to mineral location, and that the rights of a locator in this respect were paramount to that of the railway company.

Land more valuable for saline deposits than for agricultural purposes, or which contain such valuable deposits of saline as will justify expenditure for their extraction, are mineral lands, within the meaning of that term as used in the exception from the grant to the Southern Pacific Railroad Company, made by the act of July 27, 1866.[26]

§ 48. **Grants to states.** Again, the grants of lands by Congress to the states are not intended to include mineral lands in their operation, but such lands are excluded, and hence are open to exploration and appropriation.[27]

[24] Act of March 3, 1875, ch. 152; 18 Stats. at L. 482; Comp. L. 1901, p. 1568.

[25] Southern Cal. R. Co. v. O'Donnell (Cal. App., 1906), 85 Pac. Rep. 932.

[26] Elliott v. Southern Pac. R. Co., 35 Land Dec. 149.

[27] Ivanhoe Min. Co. v. Keystone Consol. Min. Co., 102 U. S. 167, bk. 26 L. ed. 126, 13 Morr. Min. Rep. 214; Hermocilla v. Hubbell, 89 Cal. 5, 26 Pac. Rep. 611. See also South Dakota v. Vermont Stone Co., 16 Land Dec. 264; Keystone Lode v. Nevada, 15 Land Dec. 259.

The Nevada act of February 13, 1867, was held to be a recognition by the legislature of that state of the validity of the claim made by the government of the United States to the mineral lands, as exempt from passage to the state of lands for school purposes.[28]

Cherokee Outlet. The Federal mining laws have no application to sections sixteen and thirty-six in the Cherokee Outlet reserved to the territory of Oklahoma, and granted to the future state for school purposes. And hence these lands are not subject to exploration, location, or entry under the mining laws.[29]

Saline-lands in New Mexico. In 1898 [30] Congress granted to the territory of New Mexico, for the benefit of its university, "all saline-lands in said territory"; and it was held that this grant included only such lands as contained common salt (sodium chloride) in its various forms of existence and deposits, and in commercially valuable quantities.[31]

§ 49. **Town sites.** The question of the right to explore for minerals within the limits of a town site, and the rights incident thereto, is treated elsewhere in this work.[32]

§ 50. **Mexican land grants.** Lands embraced within the exterior limits of a Mexican grant, which has been confirmed, and to which patent has been issued, are not open to exploration and appropriation for mining purposes.[33] But where the claimed grant has been finally rejected, the lands are thereupon thrown open to exploration and appropriation, without further action upon the part of the department.[34]

[28] Heydenfeldt v. Daney Gold & S. Min. Co., 93 U. S. 634, bk. 23 L. ed. 995, 13 Morr. Min. Rep. 204. See also Stanley v. Mineral Union, Ltd., 26 Nev. 55, 63 Pac. Rep. 59.

[29] E. A. Shirley, 35 Land Dec. 113.

[30] Act of June 21, 1898, § 3.

[31] Territory of New Mexico, 35 Land Dec. 1.

[32] See post, ch. XXIX.

[33] Moore v. Smaw, 17 Cal. 199, 12 Morr. Min. Rep. 418; Manning v. San Jacinto Tin Co., 9 Fed. Rep. 726; 7 Sawy. C. C. 418.

Compare: United States v. San Pedro and Cañon del Agua Co., 4 N. M. 225, 17 Pac. Rep. 337.

[34] In re Davis, 30 Land Dec. 220.

So, too, the fact that the claimed grant was before the court of private land claims for adjudication, does not have the effect of reserving lands within the exterior limits of the grant; they are nevertheless subject to the mineral laws of the United States.[35]

§ 51. **Tide-lands.** Public lands under the tide or navigable waters are vested in the sovereign government, and upon the creation of state governments these lands pass to the respective states, in trust, for the people.[36]

Tide-lands, or lands under navigable waters, are not public lands, within the meaning of the mining laws, and not subject to entry as such.[37] But lands below the line of ordinary low-water mark may be mined for precious metals by permission of the Secretary of War, but such operations must not interfere with navigation, or tend to create shoals.[38] And at Bering Sea, under a special act of Congress, mining operations may be carried on below low tide, subject to rules and regulations of the Secretary of War, which rules and regulations must not deprive miners on the beach of the right to dump tailings into the sea, or pump water therefrom, opposite their claims, except where such dumping would obstruct navigation.[39] The shores along Bering Sea, between low and mean high tide, are also, under such act, subject to exploration and mining for precious metals, under

[35] Lockhart v. Johnson, 181 U. S. 516, bk. 45 L. ed. 979, 21 Sup. Ct. Rep. 665, affirming Lockhart v. Willis, 9 N. M. 344, 54 Pac. Rep. 336, 19 Morr. Min. Rep. 497, overruling, in effect, In re Farr, 24 Land Dec. 1; In re Tumacacori and Calabazas Grant, 16 Land Dec. 408; In re Baca Float No. 3, 30 Land Dec. 497; In re Davis, 30 Land Dec. 220.

[36] Shively v. Bowlby, 152 U. S. 1, bk. 38 L. ed. 331, 14 Sup. Ct. Rep. 548; Illinois Cent. R. Co. v. Illinois, 146 U. S. 387, bk. 36 L. ed. 1018, 13 Sup. Ct. Rep. 110.

[37] Ex parte Logan, 29 Land Dec. 395; Ex parte Argillite Ornamental Stone Co., 29 Land Dec. 585; Alaska Gold Min. Co. v. Barbridge, 1 Alas. 311; Heine v. Roth, 2 Alas. 416.

[38] 30 U. S. Stats. at L. 1897-99, ch. 425, §§ 8-12; 6 Fed. Stats. Ann., pp. 801-820; 3 Comp. L., pp. 3540-3547; San Francisco Savings Union v. R. G. R. Petroleum & Min. Co., 144 Cal. 134, 77 Pac. Rep. 823, 103 Am. St. Rep. 73, 66 L. R. A. 242.

As to the question of extralateral rights, where that involves mining under the sea, see post, ch. XXVI.

[39] 31 U. S. Stats. at L. 1900, ch. 786, § 26; 1 Fed. Stats. Ann., p. 32.

such reasonable miners' rules, not in conflict with law, as may be adopted by organized mining districts there.[40]

The Secretary of War has no jurisdiction to grant rights in tide-lands owned by the state, nor to authorize any act which will deprive a littoral proprietor of the right of access to or egress from the public waters.[41]

A littoral proprietor, as such, has a right of access to and egress from the public waters, but he cannot enjoin mining operations upon the seashore.[42] But the public has no right to invade private property for the purpose of gaining access to navigable waters.[43]

§ 52. **Lands reclaimed by irrigation.** Lands valuable for mineral deposits, and embraced within a withdrawal of lands susceptible of irrigation by means of the reclamation project, under the act of Congress, are not thereby, and for that reason, taken out of the provisions of the Federal mining laws, but continue open to exploration and purchase under those laws.[44]

[40] 31 U. S. Stats. at L. 1900, ch. 786, § 26; 1 Fed. Stats. Ann., p. 32.

[41] San Francisco Savings Union v. R. G. R. Petroleum & Min. Co., 144 Cal. 134, 77 Pac. Rep. 823, 103 Am. St. Rep. 72, 66 L. R. A. 242; Cobb v. Lincoln Park Commissioners, 202 Ill. 427, 67 N. E. Rep. 5, 95 Am. St. Rep. 258, 63 L. R. A. 264.

[42] More v. Massini, 32 Cal. 590, 7 Morr. Min. Rep. 455; More v. Massini, 43 Cal. 389.

[43] Bolsa Land Co. v. Burdick, Sup. Ct. Cal., May 15, 1907; Coburn v. San Mateo Co., 75 Fed. Rep. 520.

[44] Instructions of Secretary of Interior to a Director of the Geological Survey, 35 Land Dec. 216.

CHAPTER V.

LODE CLAIMS.

§ 53. In general.
§ 54. "Lode," "vein," "ledge," etc., synonymous.
§ 55. "Vein" or "lode" defined.
§ 56. Same. Various definitions stated.
§ 57. Same. Fissure to have form and be well defined.
§ 58. Same. "Ledge-matter."
§ 59. The "contact."
§ 60. "In place."
§ 61. Strike or course. "Along the vein."

§ 53. **In general.** To constitute a quartz-mining claim, a vein or lode of rock in place bearing minerals must exist within the boundary lines of the mining claim.[1]

§ 54. **"Lode," "vein," "ledge," etc., synonymous.** The terms "lode," "vein," "ledge," etc., as ordinarily used, are synonymous.[2]

§ 55. **"Vein" or "lode" defined.** The use of the terms "vein" or "lode," in the sense in which those terms have been used in mining laws, has been declared to be that sense in which they are used by miners.[3] And the courts have interpreted the terms thus used as meaning a zone or belt of mineralized rock lying within bounds clearly separating it from the neighboring country.[4]

[1] La Grande Inv. Co. v. Shaw, 44 Oreg. 416, 72 Pac. Rep. 795, 74 Id. 919. See also Gleeson v. Martin White Min. Co., 13 Nev. 442, 9 Morr. Min. Rep. 429.

[2] Synnott v. Shaughnessy, 2 Idaho 122, 127, 7 Pac. Rep. 82.

[3] Harrington v. Chambers, 3 Utah 94, 1 Pac. Rep. 362; Hayes v. Lavagnino, 17 Utah 185, 53 Pac. Rep. 1029. See Stevens v. Williams, 1 McC. C. C. 480, 23 Fed. Cas. p. 44; 1 Morr. Min. Rep. 566, 573.

[4] Eureka Consol. Min. Co. v. Richmond Min. Co., 4 Sawy. C. C. 302, 8 Fed. Cas. 819, 9 Morr. Min. Rep. 578, affirmed 103 U. S. 839, bk. 26 L. ed. 557, 9 Morr. Min. Rep. 634; Gregory v. Pershbaker, 73 Cal. 109, 14 Pac. Rep. 401, 15 Morr. Min. Rep. 602; Iron Silver Min. Co. v. Cheesman, 8 Fed. Rep. 297, 2 McC. C. C. 191, 9 Morr. Minn. Rep. 552; s. c. 116 U. S. 529, bk. 29 L. ed. 712, 6 Sup. Ct. Rep. 481.

Mr. Justice Field, in a celebrated case, said: "A fissure in the earth's crust, an opening in its rocks and strata made by some force of nature, in which the mineral is deposited, would seem to be essential to the definition of a lode, in the judgment of geologists. But, to the practical miner, the fissure and its walls are only of importance as indicating the boundaries within which he may look for and reasonably expect to find the ore he seeks. A continuous body of mineralized rock lying within any other well-defined boundaries on the earth's surface and under it, would equally constitute, in his eyes, a lode. We are of opinion, therefore, that the term as used in the acts of Congress is applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. It includes . . . all deposits of mineral matter found through a mineralized zone or belt coming from the same source, impressed with the same forms, and appearing to have been created by the same processes." [5]

A valid location of a "lode" mining claim may be made of a ledge deep in the ground and appearing at the surface, not as ore, but as vein-matter only.[6]

The term "lode," as used in the acts of Congress, is applicable to any zone or belt of mineralized rock lying within bounds clearly separating it from the neighboring rock; it includes all deposits of mineral matter found through a mineralized zone or belt, coming from the same source, impressed with the same forms, and appearing to have been created by the same process; it does not include a bed of gravel from which particles of gold may be washed, although the gravel may be included within defined boundaries.[7]

Upon an issue touching the existence of a lode or vein at a given place, a question whether there exists one characteristic usually attending the existence of such lode, or another, is a part only of the main question, and, in the

[5] Eureka Consol. Min. Co. v. Richmond Min. Co., 4 Sawy. C. C. 302, 8 Fed. Cas. 819, 9 Morr. Min. Rep. 578, affirmed 103 U. S. 839, bk. 26 L. ed. 557, 9 Morr. Min. Rep. 578.

[6] Burke v. McDonald, 2 Idaho 1022, 29 Pac. Rep. 98.

[7] Gregory v. Pershbaker, 73 Cal. 109, 14 Pac. Rep. 401, 15 Morr. Min. Rep. 602.

presence of other unquestioned elements establishing its existence as a lode or vein, the presence of such characteristics becomes immaterial. For instance, if ore exists in mass and position in the body of a mountain, no other fact is required to prove the existence of a lode of the dimensions of the ore so found in mass and position; as far as it so prevails, it is a lode, whatever may be its form or structure, and it is unnecessary to inquire as to or to decide any question of the existence of a fissure, a contact, selvages, or other marks which usually attend the existence of a lode. An impregnation, to the extent to which it may be traced as a body of ore, is as fully within the terms of the act of Congress as any other form of deposit, whether it be in the form of a broken mass of limestone, between regular walls of the same rocks, or a part of such strata in solid formations mineralized by the replacement of some of their constituent parts with valuable metals, the result is the same. The existence of a lode cannot be determined by classifying it as a segregated or contact fissure-vein, or as a bed of ore; or by ascertaining whether the ore is separated from the country-rock by planes or strata visible to the eye. It must have boundaries, but not necessarily such as can be seen; they may be determined as to their existence and continuance by other means, as by assay and analysis; but a general distribution of ore throughout a formation of limestones, although unequally, is not a vein or lode, within the contemplation of section two thousand three hundred and twenty-two of the United States Revised Statutes.[8] A strata lying along the plane of contact, between formations of blue and brown limestone, mineralized to the extent of showing value in silver or gold or other metals, within the statute, and distinguishable from other parts of the mountain by such ore deposits, and by its association with the plane of contact, may constitute a lode, unless the whole mass of limestone is mineralized in the same way as the body at the contact, which is simply a casual concentration of the ore deposit.[9]

[8] See 5 Fed. Stats. Ann., p. 13.

[9] Hyman v. Wheeler, 29 Fed. Rep. 347, 15 Morr. Min. Rep. 519.

§ 56. **Same. Various definitions stated.** "A lode or vein is a body of mineral, or mineral-bearing rock, within defined boundaries, in the general mass of the mountain. In this definition the elements are the body of mineral or mineral-bearing rock and the boundaries; with either of these things well established, very slight evidence may be accepted as to the existence of the other. A body of mineral or mineral-bearing rock in the general mass of the mountain, so far as it may continue unbroken and without interruption, may be regarded as a lode, whatever the boundaries may be. In the existence of such body, and to the extent of it, boundaries are implied. On the other hand, with well-defined boundaries, very slight evidence of ore within such boundaries will prove the existence of a lode. Such boundaries constitute a fissure, and if in such fissure ore is found, although at considerable intervals and in small quantities, it is called a lode or vein."[10]

A vein or lode, the discovery of which must precede a valid location, is a body of mineralized matter, having lateral extent as well as extent upon its dip, and being a continuous mass of mineral between defined boundaries in the solid mass of the mountain. Such vein need not, however, be in a straight line, of uniform dip or thickness, or richness of mineral matter, throughout its length. The mineral may be in clefts, or fissures, in surrounding walls, with well-defined or traceable hanging and foot walls of different kinds of rock, so long as the walls can be continuously traced, and like mineral matter found therein; the clefts may, at times, diminish so as to be scarcely perceptible, and for a short distance disappear to the eye and touch, and then a little farther on reappear; and there may be spots or short spaces where the defining-walls exist without the mineral deposit therein, but which will reappear very soon, upon following the fissure.[11]

[10] Iron Silver Min. Co. v. Mike & S. Gold & S. Min. Co., 143 U. S. 394, 430, bk. 36 L. ed. 201, 12 Sup. Ct. Rep. 543, 17 Morr. Min. Rep. 436 (quoted with approval from Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, bk. 29 L. ed. 712, 6 Sup. Ct. Rep. 481; United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195. And see infra, ch. VII, §§ 76-78; ch. XXVI, §§ 322 et seq.

[11] Cheesman v. Hart, 40 Fed. Rep. 787, 16 Morr. Min. Rep. 263.

A vein or lode of mineral, authorized to be located upon public land, is a seam, or fissure, in the crust of the earth, filled with quartz, or with some other kind of rock in place, carrying gold, silver, or other valuable mineral deposits named in the statute. It is not enough to discover detached pieces of quartz, or mere bunches of quartz, not in place. The vein, however, may be very thin, and it may be many feet thick or thin in places, and in other places widening out into extensive bodies of ore; in places nearly or quite barren, and in other places immensely rich in ore.[12]

A separate and distinct lode, upon which a location may be made, may exist by a part of a larger body of ore or lode in the earth's surface, being detached by an upheaval or depression by which the great body or mass was broken up, and this part displaced and deposited in another position, being still connected at one of its ends with the main body or lode from which it was thus detached.[13]

§ 57. Same. Fissure to have form and be well defined. It is not absolutely necessary that there shall be a clean fissure filled with mineral or mineral-bearing rock in its entirety, although it may be such when filled in places with other matter; but the fissure should have form and be well defined, with hanging and foot walls.[14]

§ 58. Same. "Ledge-matter." Although it is not requisite that well-defined walls be developed, or that paying ore be found within them, yet there must be something found in place, as rock, clay, or earth, so colored, stained, changed, and decomposed by mineral element as to mark and distinguish it from the inclosing country. While the contents of ore-bearing veins widely differ, still there is that indescribable peculiarity in the "ledge-matter," the matrix of

[12] Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 675, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

[13] Iron Silver Min. Co. v. Murphy, 3 Fed. Rep. 368, 373, 2 McC. C. C. 121, 1 Morr. Min. Rep. 548.

[14] Consolidated Wyo. G. Min. Co. v. Champion Min. Co., 63 Fed. Rep. 540, 18 Morr. Min. Rep. 113.

all ledges, by which the experienced miner easily recognizes his ledge when discovered.[15]

While metalliferous rock in place and in fissure may be found, under conditions, within clearly defined boundaries, so as to require recognition as a vein or lode, yet a broad mineral zone, having within its limits true fissure-veins plainly bounded, cannot be regarded as a single vein or lode, although the stone itself may have boundaries capable of being traced.[16]

§ 59. **The "contact."** Whether or not that which is commonly called the "contact" is to be regarded as a vein or lode, is to be determined by its value, whatever may be the rules with reference to true fissures; and whether or not the material found is associated, frequently or infrequently, with valuable ore in the deposits in the neighborhood, is not material. It is sufficient if there is any mineral of value—something more than a mere trace.[17]

§ 60. **"In place."** The words "in place" indicate the body of the country which has not been affected by the action of the elements; which may remain in its original state and condition, as distinguished from the superficial mass which may lie above it. There are quite a number of words which may apply to that superficial deposit; that which is movable, as contrasted with the immovable mass that lies below, such as alluvium, detritus, debris. Perhaps the last word comes as near as any other that is in use—the word "debris." It has also been spoken of as "tumble-stuff," evidently intending to convey the idea of that which may have been brought to its position by the action of the elements, as distinguished from the vast body of earth which lies below. In speaking of those deposits which are in veins or lodes, and of the general mass of rock from which they may be distinguished,

[15] Burke v. McDonald, 2 Idaho 646, 33 Pac. Rep. 49, 17 Morr. Min. Rep. 325.

[16] Mount Diablo M. & M. Co. v. Callison, 5 Sawy. C. C. 439, 17 Fed. Cas. 919, 9 Morr. Min. Rep. 616.

[17] Stevens v. Gill, 23 Fed. Cas. 12, 1 Morr. Min. Rep. 576.

miners usually call the surrounding mass of rock in which the lodes or veins are found, the "country," or the "country-rock." By this they mean the character and description of the general body of the mountain, whether it be granite, or gneiss, or syenite, or porphyry, or any other of the many different kinds of rock. They use that term to describe the general mass of rock of which the mountain is composed, as distinguished from that which is found in the vein or lode. And when the statute speaks of veins or lodes in place, it means such as lie in a fixed position in the general mass of country-rock, or in the general mass of the mountain. As distinguished from the country-rock, this superficial deposit may have been brought into its present position by the elements, may have been washed from above, or may have come there as alluvium or diluvium from a considerable distance; so that when a vein or lode in this general mass of country-rock is found, it may be said to be in place, as distinguished from the superficial deposit, and this is true, whatever the character of the deposit may be; that is to say, as to whether it belongs to one class of veins or lodes or another: it is in place if it is held in the embrace, is inclosed by the general mass, of the country.[18]

But it is not ore "in place," within the statute, where the mass overlying the ore is mere drift, or a loose deposit.[19]

§ 61. Strike or course. "Along the vein." The words used in the Federal statute are, "along the vein."[20] These words, however, are generally regarded as synonymous with the strike, course, or trend of the vein. And probably the most comprehensive definition of these words is that given by Mr. Justice Bradley, as follows: "The most practicable rule is to regard the course of the vein as that

[18] Stevens v. Williams, 23 Fed. Cas. 44, 1 Morr. Min. Rep. 557; Iron Silver Min. Co. v. Cheesman, 116 U. S. 529, bk. 29 L. ed. 712, 6 Sup. Ct. Rep. 481; Cheesman v. Shreeve, 40 Fed. Rep. 787, 17 Morr. Min. Rep. 260; Burke v. McDonald, 2 Idaho 646, 33 Pac. Rep. 49, 17 Morr. Min. Rep. 325. See also Stevens v. Gill, 23 Fed. Cas. 12, 1 Morr. Min. Rep. 576.

[19] Tabor v. Dexter, 23 Fed. Cas. 615, 9 Morr. Min. Rep. 614.

[20] U. S. Rev. Stats., § 2320; 5 Fed. Stats. Ann., p. 8.

which is indicated by surface outcrop, or surface explorations and workings. It is on this line that claims will naturally be laid, whatever be the character of the surface, whether level or inclined." [21]

[21] Flagstaff Silver Min. Co. v. Tarbet, 98 U. S. 463, bk. 25 L. ed. 253, 9 Morr. Min. Rep. 607. See also Iron Silver Min. Co. v. Elgin Min. & S. Co., 118 U. S. 196, bk. 30 L. ed. 98, 6 Sup. Ct. Rep. 1177, 15 Morr. Min. Rep. 641; Carson City Gold & S. Min. Co. v. North Star Min. Co., 73 Fed. Rep. 597, affirmed 83 Fed. Rep. 658, 28 C. C. A. 333, 18 Morr. Min. Rep. 118.

CHAPTER VI.

PLACER CLAIMS.

§ 62. In general.
§ 63. Alum.
§ 64. Asphaltum.
§ 65. Borax.
§ 66. Brick-clay.
§ 67. Building-stone.
§ 68. Fire-clay.
§ 69. Marble. Marble deposits.
§ 70. Petroleum, natural gas, etc.
§ 71. Phosphate deposits.
§ 72. Salt-lands.
§ 73. Stone suitable for making lime.
§ 74. Timber in valuable quantities on land.

§ 62. In general. Grounds subject to appropriation as a placer mining claim are such as contain mineral in the earth, sand, or gravel; grounds which include valuable deposits not in place, that is, not fixed in rock, but there in a loose state, and which may, in many cases, be collected by washing or amalgamation without milling.[1]

Placer mining, strictly speaking, may be said to refer only to alluvial wash or gold-gravel; but in the sense in which it is ordinarily used, and in the sense in which it is used in the mining laws, it refers to all forms of deposits, except veins of quartz or other rock in place.[2]

The supreme court of the United States has held the following substances to be mineral, in construing the statute words, in the Revised Statutes, "valuable mineral deposits," as follows: Alum, asphaltum, borax, guano, diamonds,

[1] United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195.

[2] U. S. Rev. Stats., § 2329; 5 Fed. Stats. Ann., p. 42. See United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195; St. Louis Smelt. & R. Co. v. Kemp, 104 U. S. 636, bk. 26 L. ed. 313, 875; Mitchell v. Cline, 84 Cal. 409, 24 Pac. Rep. 164; Gregory v. Pershbaker, 73 Cal. 109, 14 Pac. Rep. 401, 15 Morr. Min. Rep. 602.

gypsum, resin, marble, mica, slate, amber, petroleum, limestone, building-stone, and coal.[3] The court concluded its decision in this case as follows: "We do not deem it necessary to attempt an exact definition of the words 'mineral lands' as used in the act of July 2, 1864. With our present light upon the subject, it might be difficult to do so. It is sufficient to say that we see nothing in that act, or in the legislation of Congress up to the time this road was definitely located, which can be construed as putting a different definition upon these words from that generally accepted by the text-writers upon the subject. Indeed, we are of the opinion that this legislation consists with, rather than opposes, the overwhelming weight of authority to the effect that mineral lands include, not merely metalliferous lands, but all such as are chiefly valuable for their deposits of a mineral character, which are useful in the arts or valuable for purposes of manufacture."

A location, under the mining laws, does not, of itself, amount to an appropriation of land in such a sense as to preclude the inclusion of the same, or parts thereof, within the limits of a subsequent location, subject to such existing rights as may be thereafter maintained under the prior location; and the fact that the placer location, if made to conform to legal subdivisions of the public surveys, would embrace all or a portion of the land covered by a prior location, is not a sufficient reason for failure to conform the placer location to legal subdivisions, as required by section two thousand three hundred and thirty-one of the Revised Statutes.

The fact that portions of other claims already entered may be embraced in a placer location by conforming the same to legal subdivisions, does not make such conformity impracticable, within the meaning of section two thousand three hundred and thirty-one of the Revised Statutes, inasmuch as, under the law, such entered claims may be excluded from patent proceedings involving the placer.[4]

[3] Northern Pac. R. Co. v. Soderberg, 188 U. S. 526, bk. 47 L. ed. 575, 23 Sup. Ct. Rep. 365.

[4] Rialto No. 2 Placer Min. Claim, 31 Land Dec. 44. See also Mary Darling Placer, 31 Land Dec. 64.

Lands not embraced in the application for patent for the mining claim, and in the published and posted notice and other proceedings, cannot be embraced in the entry. The smallest legal subdivision of the public surveys provided for by the mining laws is a subdivision of ten acres, in square form; and said laws do not contemplate that in the location and entry of placer mining claims rectangular tracts of five acres may be recognized and treated as legal subdivisions.[5]

Placer not invalid because it embraces vein. The fact that the placer mining locations, if made to conform as nearly as practicable to the system of public-land surveys and the rectangular subdivisions of such surveys, as required by section two thousand three hundred and thirty-one of the Revised Statutes, would embrace small portions of land not valuable for placer mining, constitutes no reason for failure to conform the location to such system and legal subdivisions, where, if so conformed, the land embraced in the location would be, as a whole, more valuable for placer mining than for agricultural purposes. It is no objection to the validity of a placer mining location that it embraces veins or lodes as well as placer deposits.[6]

§ 63. **Alum.** Lands chiefly valuable for deposits of alum may be located as a placer claim.[7]

§ 64. **Asphaltum.** This is generally regarded as a mineral.[8]

§ 65. **Borax.** Borax is unquestionably a mineral, within the meaning of the mining laws.[9] Lands chiefly valuable therefor have been usually located as placer claims; but whether or not they are not more properly subject to loca-

[5] Roman Placer Min. Claim, 34 Land Dec. 260.
[6] Hogan and Idaho Placer Min. Claims, 34 Land Dec. 42.
[7] Downey v. Rogers, 2 Land Dec. 707.
[8] Conlin v. Kelly, 12 Land Dec. 1; Downey v. Rogers, 2 Land Dec. 707.
[9] Secretary Teller v. Commissioner McFarland, Jan. 30, 1883, 1 Land Dec. 561; Downey v. Rogers, 2 Land Dec. 707.

tion as lode claims, when in a deposit of such form as to come more nearly within the purview of the phrase, "rock in place," is an open question, and one upon which neither the department nor the courts apparently have as yet passed. But the dictum of Assistant Secretary of the Interior Woodruff, under date of June 29, 1907, is to the effect that a valuable deposit of non-metallic substance, if in the form of a lode or vein of rock in place, should be located and patented under the laws governing lode claims.[9a] In this case, the Department decided that marble was not a valuable deposit, as contemplated under sections two thousand three hundred and twenty and two thousand three hundred and twenty-two of the Revised Statutes, and, regardless of the form in which it might be found, must not be entered or patented under the laws governing lode claims, but must be patented as a placer mining claim, the same as building-stone, under act of Congress of August 4, 1892.[9b]

§ 66. **Brick-clay.** Lands containing deposits of ordinary brick-clay are not mining-lands, within the meaning of the mining laws, although they are more valuable for such deposits than for agricultural purposes.[10]

§ 67. **Building-stone.** By the express terms of an act passed by Congress, August 4, 1892, lands chiefly valuable for building-stone may be entered as a placer claim; but the statute excepts lands reserved for the benefit of the public schools, or donated to any state.[11] This statute merely explains, to a certain extent at least, the previous reservation of all lands valuable for mineral deposits.[12] And the right conferred under it to explore public lands carries

[9a] Henderson v. Fulton, 35 Land Dec. 652-664.

[9b] 27 Stats. at L. 348; 5 Fed. Stats. Ann. p. 47; U. S. Comp. Stats. 1901, p. 1431.

[10] Kling v. Bradford, 31 Land Dec. 108.

[11] Act of Congress, Aug. 4, 1892, ch. 375, 27 Stats. at L. 348. See Wheeler v. Smith, 5 Wash. 704, 32 Pac. Rep. 784.

[12] Northern Pac. R. Co. v. Soderberg, 188 U. S. 526, bk. 47 L. ed. 575, 23 Sup. Ct. Rep. 365.

with it the right to take whatever is found in the course of the exploration.[13]

"**Lands chiefly valuable for stone**" are subject to entry, under the act of June 3, 1878, regardless of whether or not the stone can, under existing conditions, considering the cost of quarrying and transportation, be marketed at a profit. The real question to be determined is, whether the land involved is of such character that it can be entered under the act of June 3, 1878, known as the timber and stone act. Evidently the statute has reference to the intrinsic value of the land because of its stone, and if the land be found to be thus valuable, and the applicant be willing to invest his money therein, he should be allowed to make entry thereof, regardless of the question as to whether or not the investment will prove to be profitable to him.[14]

§ 68. **Fire-clay.** Lands chiefly valuable for deposits of fire-clay are subject to appropriation under the mining laws.[15]

§ 69. **Marble. Marble deposits.** Lands valuable only on account of marble deposits therein contained are subject to placer entry under the mining laws.[16]

Granite. In a very recent case, the supreme court of the United States has held that granite-quarries are mineral lands, within the meaning of the exception of such lands mentioned in the act of July 2, 1864, and, as such, are excluded in land grants made to the Northern Pacific Railroad Company.[17]

[13] Sullivan v. Schultz, 22 Mont. 541, 57 Pac. Rep. 279, holding that one discovering granite is not a trespasser.

[14] Narver v. Eastman, 34 Land Dec. 125.

[15] Alldritt v. Northern Pac. R. Co., 25 Land Dec. 349.

[16] Pacific Coast Marble Co. v. Northern Pac. R. Co., 25 Land Dec. 233, Henderson v. Fulton, 35 Land Dec. 652. See also Phelps v. Church of Our Lady, Help of Christians, 115 Fed. Rep. 882, 53 C. C. A. 407, 22 Morr. Min. Rep. 233.

[17] Northern Pac. R. Co. v. Soderberg, 188 U. S. 526, 536, bk. 47 L. ed. 575, 23 Sup. Ct. Rep. 365, Brewer and Peckham, JJ., dissenting.

§ 70. **Petroleum, natural gas, etc.** Lands chiefly valuable for petroleum may be located as a placer claim.[18]

§ 71. **Phosphate deposits.** It has been held that lands chiefly valuable for phosphate deposits are mineral lands.[19]

§ 72. **Salt-lands.** Under the act of Congress of January 31, 1901, all unoccupied public lands containing salt-springs, or deposits of salt in any form, and chiefly valuable therefor, are subject to location and purchase under the mineral laws relating to placer mining claims. And under this act a person holding as assignee may make entry in his own name, provided that he has not held under this act at any time, either as assignee, locator, or entryman, any other lands. His right is exhausted by having held, under this act, any particular tract, either as locator, assignee, or entryman; either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.[20]

§ 73. **Stone suitable for making lime.** It has also been held that lands containing stone suitable for making lime might properly be entered as placer claims.[21]

§ 74. **Timber in valuable quantities on land.** An application for a patent to a placer claim, otherwise unobjectionable, is not to be rejected, merely because of the existence of a valuable growth of timber upon the land. As was said by the supreme court of the United States, "Probably in a majority of cases where a placer claim is located, other matters than the existence of valuable

[18] Olive Land & D. Co. v. Olmstead, 103 Fed. Rep. 568, 20 Morr. Min. Rep. 700. See act of Congress, Feb. 11, 1897, ch. 216, 29 Stats. at L. 526.

[19] Gary v. Todd, 18 Land Dec. 58; Florida Cent. & P. R. Co., 26 Land Dec. 600.

[20] See circulars issued by the Department of the Interior, 31 Land Dec. 131, 132. And see supra, § 47.

[21] Shepherd v. Bird, 17 Land Dec. 82. See also Morrill v. Northern Pac. R. Co., 30 Land Dec. 475.

deposits of mineral enter into the estimate of its worth. Its accessibility to places where supplies and medical attendance can be obtained for the men engaged in working upon it, and timber secured to support the drifting or tunneling which may be necessary; the facility with which water can be brought to wash the mineral from the earth, sand, or gravel with which it may be mingled; and the uses to which the land may be subjected when the claim is exhausted, — may be proper subjects of consideration. A prudent miner acting wisely in taking up a claim, whether for a placer mine or for a lode or vein, would not overlook such circumstances; and they may in fact control his action in making the location." [22]

The authority and permission to fell and remove timber and trees, conferred by the timber and stone act,[23] extends only to the public mineral lands susceptible of mineral entry alone. The act does not, as to such lands, secure to miners of the vicinity an exclusive right of timber appropriation. If any given tract is in fact mineral in character, title to the land, together with the timber thereon, may be acquired under the mineral laws; and, on the other hand, if the tract is non-mineral and vacant, chiefly valuable for timber and unfit for cultivation, containing no mineral or other improvements, it may be purchased upon conditions imposed and as provided by the timber and stone act.[24]

[22] United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195.

[23] Act of June 3, 1878, 20 Stats. at L. 88; 7 Fed. Stats. Ann., p. 297; U. S. Comp. Stats. 1901, p. 1528.

[24] Gallagher v. Gray, 35 Land Dec. 90.

CHAPTER VII.

LODE AND PLACER CLAIMS WITHIN THE SAME AREA.

§ 75. In general.
§ 76. What constitutes known vein or lode.
§ 77. Same. Mere outcroppings.
§ 78. Same. Mere belief not based upon discovery.
§ 79. Same. Location not necessary.
§ 80. Time at which vein must be known.

§ 75. In general. Where placer-ground contains a known lode or vein, the locator of the placer claim, if he wishes to acquire the lode, should make a separate location of the lode or vein in the manner provided by law for making a lode location.[1] The statute has no application to veins or lodes within the boundaries of placer claims which have been previously located under the laws of the United States, and are in the possession of the locators or their assigns. Such locations, when perfected under the law, are the property of the locators, or those to whom the locators have conveyed their interests. The section can apply only to lodes or veins not taken up and located so as to become the property of others. If any are not thus owned, and are known to exist, the applicant for the patent must include them in his application, or he will be deemed to have declared that he had no right to them.[2] But where the existence of a vein or lode in a placer claim is not known at the time of the application for patent, that instrument will convey all valuable minerals and other deposits subsequently found within the bounds of the claim.[3]

An applicant for a placer patent is chargeable with notice

[1] U. S. Rev. Stats., § 2333; 5 Fed. Stats. Ann., p. 45; Comp. Stats. 1901, p. 1433; 17 Stats. at L., p. 94.

[2] Sullivan v. Iron Silver Min. Co., 143 U. S. 431, bk. 36 L. ed. 214, 12 Sup. Ct. Rep. 555. See also Railroad Lode v. Noyes Placer Min. Co., 9 Land Dec. 26.

[3] United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195; Mutchmor v. McCarty, 149 Cal. 603, 611, 87 Pac. Rep. 85. See Clipper M. Co. v. Eli M. & L. Co., 194 U. S. 221, 228, bk. 48 L. ed. 944, 951, 24 Sup. Ct. Rep. 632.

of the existence of a tunnel therein, and also chargeable with notice of whatever a casual inspection of that tunnel would disclose. He cannot be heard to say, "I did not enter and examine this tunnel, and therefore know nothing of the veins apparent in it." The applicant must be adjudged to have known that which others knew, and which he would have ascertained if he had discharged fairly his duty to the government.[4]

The applicant may not go upon a prior valid placer location to prospect for unknown lodes. He is a trespasser, and cannot initiate a title of such trespass.[4a]

§ 76. What constitutes known vein or lode. To be a known vein within the contemplation of section two thousand three hundred and thirty-three of the statute, it is enough that it be known; and in this respect, to come within the sense of the statute, it must either have been known to the applicant for the placer claim or known to the community generally, or else disclosed by workings and observation to any one making reasonable and fair inspection for the purpose of obtaining title from the government.[5]

The vein or lode must be clearly ascertained. It is not enough that there may have been some indications, by outcroppings on the surface, of the existence of lodes or veins of rock in place bearing gold or silver or other metal, to justify their designation as "known" veins or lodes; to meet that designation, veins or lodes must be clearly ascertained, and be of such an extent as to render the land more valuable on that account, and to justify their exploitation.[6]

[4] Iron Silver Min. Co. v. Mike & S. Gold & S. Min. Co., 143 U. S. 394, 430, bk. 36 L. ed. 201, 12 Sup. Ct. Rep. 543, 17 Morr. Min. Rep. 436.

Question of constructive notice is very exhaustively treated in **Kerr's Cyc. Civ. Code Cal.**, pp. 20-27.

[4a] Clipper M. Co. v. Eli M. & L. Co., 194 U. S. 221-228, bk. 48 L. ed. 944, 951, 24 Sup. Ct. Rep. 632.

[5] Iron Silver Min. Co. v. Mike & S. Gold & S. Min. Co., 143 U. S. 394, 430, bk. 36 L. ed. 201, 12 Sup. Ct. Rep. 543, 17 Morr. Min. Rep. 436. See 5 Fed. Stats. Ann., p. 45.

[6] Iron Silver Min. Co. v. Mike & S. Gold & S. Min. Co., 143 U. S. 394, 430, bk. 36 L. ed. 201, 12 Sup. Ct. Rep. 543, 17 Morr. Min. Rep. 436 (quoting with approval from United States v. Iron Silver Min. Co., 128

A vein or lode which has been located under the law, its boundaries specifically marked on the surface so as readily to be traced, and notice of location recorded in the usual books of record within the district, is known "to exist," within the meaning of the statute, although personal knowledge of the facts may not be possessed by the applicant for the patent for a placer claim. The information which the law requires the locator to give to the public must be deemed sufficient to acquaint the applicant with the existence of the vein or lode.[7]

As was said by the United States supreme court,[8] "Knowledge of the existence of a lode or vein within the boundaries of a placer claim may be obtained from its outcrop within such boundaries; or from the developments of the placer claim previous to the application for a patent; or by the tracing of the vein from another lode; or perhaps from the general condition and developments of mining-ground adjoining the placer claim. It may also be obtained from the information of others who have made the necessary explorations to ascertain the fact, and perhaps in other ways."

§ 77. **Same. Mere outcroppings.** It is not enough that there may have been some indications, by outcroppings on the surface, of the existence of lodes or veins of rock in place bearing gold or silver or other mineral, to justify their designation as "known" veins or lodes. To meet that designation, veins or lodes must be clearly ascertained, and be of such extent as to render the land more valuable on that account, and justify their exploitation.[9]

§ 78. **Same. Mere belief, not based upon discovery** within the placer tract, or any tracing of a vein or lode

U. S. 673, 683, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195); Migeon v. Montana Cent. R. Co., 77 Fed. Rep. 249, 23 C. C. A. 156, 18 Morr. Min. Rep. 446; Mutchmor v. McCarty, 149 Cal. 603, 612, 87 Pac. Rep. 25.

[7] Noyes v. Mantle, 127 U. S. 348, bk. 32 L. ed. 168, 8 Sup. Ct. Rep. 1132, 15 Morr. Min. Rep. 611.

[8] Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, bk. 31 L. ed. 466, 8 Sup. Ct. Rep. 598.

[9] United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195.

adjoining thereto, is not sufficient; such as a common belief in the community, or by the locators of the placer claim, that underlying all the country in the vicinity was a horizontal vein or deposit, frequently called a "blanket-vein," and the locators obtained the patent to the placer claim with a view to thereafter developing such underlying vein; and the fact that a number of shafts sunk elsewhere in the district had disclosed horizontal deposits of a particular ore, which might be merely parts of a vein of continuous extension through all that district, is not the knowledge required by section two thousand three hundred and thirty-three.[10]

As was said in another case,[11] "There may be difficulty in determining whether such knowledge in a given case was had; but between mere belief and knowledge there is a wide difference. The court could not make them synonymous by its charge, and thus, in effect, incorporate new terms into the statute."

§ 79. **Same. Location not necessary.** Location is not necessary before a vein or lode can be adjudged a known vein or lode, within the exception of a patent to a placer claim and the provisions of the Federal statute.[12] The only requisite is that it be known to exist, and that it be not included in the application for the placer.[13]

The term "known vein," as used in section two thousand three hundred and thirty-three, is not to be taken as synonymous with "located vein"; that term refers to a vein or lode whose existence is known, in contradistinction to one which has been appropriated by location.[14]

§ 80. **Time at which vein must be known.** The time at which the vein or lode within the placer must be known is

[10] Sullivan v. Iron Silver Min. Co., 143 U. S. 431, bk. 36 L. ed. 214, 12 Sup. Ct. Rep. 555.

[11] Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, bk. 31 L. ed. 466, 8 Sup. Ct. Rep. 595.

[12] Sullivan v. Iron Silver Min. Co., 143 U. S. 431, bk. 36 L. ed. 214, 12 Sup. Ct. Rep. 555.

[13] Railroad Lode v. Noyes Placer Min. Co., 9 Land Dec. 26.

[14] Iron Silver Min. Co. v. Mike & S. Gold & S. Min. Co., 143 U. S. 394, 430, bk. 36 L. ed. 201, 12 Sup. Ct. Rep. 543.

the time at which the application is made, and not the date of the patent.[15] Nor does the subsequent discovery of lodes upon the ground, and their successful working, affect the good faith of an applicant for a patent to a placer claim. That must be determined by what was known to exist at the time.[16] Nothing then disclosed can limit the effect of the patent, or except from its scope any vein or lode within its territorial limits.[17]

[15] Iron Silver Min. Co. v. Mike & S. Gold & S. Min. Co., 143 U. S. 394, 430, bk. 36 L. ed. 201, 12 Sup. Ct. Rep. 543, 17 Morr. Min. Rep. 436; United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195; Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, bk. 31 L. ed. 466, 8 Sup. Ct. Rep. 598.

[16] United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195.

[17] Sullivan v. Iron Silver Min. Co., 143 U. S. 431, bk. 36 L. ed. 214, 12 Sup. Ct. Rep. 555.

CHAPTER VIII.

TUNNEL SITES.

§ 81. In general.
§ 82. "Face of the tunnel" defined.
§ 83. "Line of the tunnel."
§ 84. Discovery of mineral.
§ 85. Size and extent of location.
§ 86. Marking boundaries.
§ 87. Right of tunnel-site owner and locator.
§ 88. Same. Blind leads.

§ 81. **In general.** The Federal mining laws provide that "where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel, on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid." [1]

§ 82. **"Face of the tunnel" defined.** The face of the tunnel, as defined by the land department, means the first working face formed in the tunnel, — the point at which the tunnel actually enters cover, — it being from this point that the three thousand feet are to be counted, upon which prospecting is prohibited.[2]

§ 83. **"Line of the tunnel."** The line of the tunnel has reference to the space marked by the sides or exterior lines

[1] U. S. Rev. Stats., § 2323; 5 Fed. Stats. Ann., p. 18.
[2] General Circular of Instruction, Oct. 31, 1881.

of the tunnel.[3] A greater width than this, it cannot be fairly said to imply. And, following that definition, it has been held that the tunnel claimant has no rights which could sustain an adverse claim against another claimant, whose location crossed "the center line of the tunnel site nearly at right angles," the discovery-shaft thereof being "near, but not on, the center line, being within about fifty-five feet therefrom."[4]

§ 84. **Discovery of mineral.** The right of a tunnel-owner to locate a vein discovered in the tunnel arises upon its discovery.[5] "The discovery in the tunnel is like a discovery on the surface. Until one is made there is no right to locate a claim in respect to the vein, and the time to determine where and how it shall be located arises only upon the discovery."

Under the Federal statute, the right of a tunnel-owner to a vein discovered in the tunnel relates back to the time of the location of the tunnel site.[6]

§ 85. **Size and extent of location.** The Federal statutes provide that where a tunnel is run in the development of a vein or lode, or for the discovery of minerals, the owners of the tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of the tunnel, on the line thereof, not previously known to exist, discovered from the tunnel, to the same extent as if discovered from the surface.[7]

The right of a tunnel-owner discovering a vein in the tunnel may be exercised by a location of a claim the full length of

[3] Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 167 U. S. 108, bk. 42 L. ed. 96, 17 Sup. Ct. Rep. 762, 18 Morr. Min. Rep. 661; Back v. Sierra Nevada Consol. Min. Co., 2 Idaho 386, 17 Pac. Rep. 83.

[4] Corning Tunnel Co. v. Pell, 4 Colo. 507, 14 Morr. Min. Rep. 612.

[5] Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 167 U. S. 108, bk. 42 L. ed. 96, 17 Sup. Ct. Rep. 762, 18 Morr. Min. Rep. 661. See also Corning Tunnel Co. v. Pell, 4 Colo. 507.

[6] Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 167 U. S. 108, bk. 42 L. ed. 96, 17 Sup. Ct. Rep. 762, 18 Morr. Min. Rep. 661, affirming 32 U. S. App. 75, 13 C. C. A. 390, 66 Fed. Rep. 200.

[7] U. S. Rev. Stats., § 2323; 5 Fed. Stats. Ann., p. 18. And see Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, bk. 32 L. ed. 172, 8 Sup. Ct. Rep. 1214, 17 Morr. Min. Rep. 127.

fifteen hundred feet on either side of the tunnel, or of such proportion thereof on either side as the locator may desire.[8]

§ 86. **Marking boundaries.** In the case of a location from a discovery in a tunnel, it is as necessary to mark the boundaries on the surface as in any other case.[9]

§ 87. **Right of tunnel-site owner and locator.** The Federal mining laws give to the locator of a mining-tunnel, who diligently prosecutes its excavation, the right to the possession of every vein or lode of mineral within three thousand feet from the face of the tunnel, not previously known to exist, that is, not known to exist previous to the location and commencement of the tunnel, and which he shall discover in the tunnel, to the same extent as if he had discovered the same upon the surface, and he may locate the fifteen hundred feet so given him all upon one side of the tunnel, including the bore of the tunnel as the point of discovery, or partly on each side, including the bore of the tunnel as a part of the fifteen hundred feet. Any discovery of such vein from the surface subsequent to the location and commencement of the tunnel does not in any manner affect or defeat his right to such previously unknown lodes, but such discoveries and locations are invalid as against his rights thereto, providing he prosecutes the work upon the tunnel with reasonable diligence.[10] By commencing and prosecuting the work of excavating the tunnel with diligence, the locator acquires a right to locate any lode or vein discovered in his tunnel which was not known to exist prior to the location of the tunnel, and which did not appear on the surface, in the

[8] Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 167 U. S. 108, bk. 42 L. ed. 96, 17 Sup. Ct. Rep. 762, 18 Morr. Min. Rep. 661.

[9] Rico-Aspen Consol. Min. Co. v. Enterprise Min. Co., 53 Fed. Rep. 321, affirmed 167 U. S. 108, bk. 42 L. ed. 96, 17 Sup. Ct. Rep. 762, 18 Morr. Min. Rep. 661. See also Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266.

Compare: Campbell v. Ellet, 167 U. S. 116, bk. 42 L. ed. 101, 17 Sup. Ct. Rep. 765, 18 Morr. Min. Rep. 669, affirming s. c. 18 Colo. 510, 33 Pac. Rep. 521.

[10] Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 66 Fed. Rep. 200, 205, 13 C. C. A. 390.

same manner and to the same extent as if he had discovered such vein or lode upon the surface. And it has been held by the Montana court,[11] that where the tunnel-owner has complied with the law in all respects, the locator of a mining claim located within his pre-empted rights, across the line of his tunnel, on a lode that is shown to cross the tunnel location on its strike or course, located subsequent to the commencement of his tunnel, and not known to exist prior thereto, and not appearing on the surface, will be enjoined from prosecuting his proceeding to procure a patent for such location, until it can be determined by a diligent prosecution of the tunnel excavation, whether the lode will be discovered therein, or until the prosecution of the work is abandoned. As that court said, "This difficulty lies in the fact that it cannot be definitely shown in advance either that the tunnel will or will not strike such lode. A lode lying near the line of the tunnel, with its strike or course at the surface extending along parallel with the line of the tunnel, may so dip in its downward course as to be in the range of the tunnel excavation. In the case at bar, however, it is shown that the strike of the lode in its course crosses the line of the tunnel, and the location made by respondent overlies the line of the tunnel. It seems to us that the intent of the statute is to provide for this condition in which the parties are placed, and reserves to the tunnel claimant the opportunity to demonstrate what veins or lodes may be discovered therein, before allowing such veins or lodes to be appropriated and taken by another. It is argued that it is against the policy of the law to allow tracts of the mining-lands to be thus held in reserve, before any mines are discovered therein. This argument is sought to be supported by pointing to the other statutes allowing locations of mining claims to be made only on discovery of valuable deposits of precious metals therein. It may be answered, however, by the observation that the policy of the law also seems to aim at the encouragement of discovery and development of mines. And so, in order to encourage

[11] Hope Min. Co. v. Brown, 11 Mont. 370, 28 Pac. Rep. 732.

parties to undertake the more hazardous enterprise of driving tunnels in localities where lodes or veins do not appear on the surface, and are not known to exist — localities which might be otherwise allowed to lie unexplored — the law has provided a reservation not provided in cases of less hazardous and less expensive manner of prospecting. We hold that, upon the showing made, the respondent ought to be restrained from prosecuting his proceeding for a patent to the land described in plaintiff's complaint, while appellant is prosecuting such tunnel as required by law, and until it is demonstrated that such vein or lode upon which respondent has made his location of the ground in controversy will not be discovered in said tunnel, or until such tunnel rights are abandoned by cessation to prosecute the tunnel as provided by law."

§ 88. **Same. Blind leads.** Under the provisions of the Federal mining laws, a tunnel site can embrace only unappropriated public land; it cannot be projected across or extended into prior valid locations, either for the purpose of discovering and acquiring title to blind leads within the vertical boundaries of such prior locations, or for mere right of way. The law makes no exceptions or reservations from the rights granted to locators under which the invasion of the territory of a prior location for such purposes can be justified, and the rules of the common law relating thereto must prevail, in the absence of such exception or reservation.[12]

One having a license to extend the tunnel of another into and through his own claim for development-work thereof, and who does in fact extend it beyond his own claim into the public domain, and thereby discovers a vein, may lawfully locate thereon a claim in his own interest.[13]

[12] Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 27 Colo. 1, 59 Pac. Rep. 607, 83 Am. St. Rep. 17, 50 L. R. A. 209, 20 Morr. Min. Rep. 192, affirmed 182 U. S. 499, bk. 45 L. ed. 1200, 21 Sup. Ct. Rep. 885, 21 Morr. Min. Rep. 381.

[13] Hall v. Kearny, 18 Colo. 505, 33 Pac. Rep. 373, 17 Morr. Min. Rep. 594.

CHAPTER IX.

MILL SITES.

§ 89. In general.
§ 90. Land must be non-mineral and non-contiguous.
§ 91. Ownership of mine not necessary.
§ 92. Must be used for mining or milling purposes.
§ 93. What constitute mining or milling purposes.
§ 94. Number of mill sites.
§ 95. Question of law and fact.

§ 89. In general. The Federal statute authorizes the location of non-contiguous, non-mineral land, not to exceed five acres in area, in connection with a lode or vein, but separate and apart therefrom, or independent in certain cases, to be used as a mill site.[1] And the patentee of a mill site, like the patentee of any other non-mineral land, holds all the minerals discovered after the issuance of the patent.[2]

§ 90. Land must be non-mineral and non-contiguous. The statute in terms permits only non-mineral lands,[3] not contiguous to the vein or lode, to be occupied for mill-site purposes, and only such non-adjacent surface-ground to be embraced and included in an application for patent for the lode claim, and limits the area of such non-adjacent land to five acres.[4]

A district rule, or a state or territorial statute, which permits the location of a mill site, without reference to the character of the land, cannot prevail so as to permit such a location on mineral land.[5]

Defining contiguity to vein or lode claim, construing sec-

[1] U. S. Rev. Stats., § 2337, 5 Fed. Stats. Ann., p. 52.

[2] In re Mabel Lode, 26 Land Dec. 675.

[3] Burns v. Clark, 133 Cal. 634, 66 Pac. Rep. 12, 85 Am. St. Rep. 233, 21 Morr. Min. Rep. 489.

[4] In re Alaska Copper Co., 32 Land Dec. 128, where the lodes and mill sites claimed formed one contiguous, uninterrupted group, in manifest contravention of the plain terms of the statute.

[5] Cleary v. Skiffich, 28 Colo. 362, 65 Pac. Rep. 59, 89 Am. St. Rep. 207, 21 Morr. Min. Rep. 284.

tion two thousand three hundred and thirty-seven of the Revised Statutes, the land department holds that the words "vein or lode," in that section, are not used in the restricted sense of indicating a body of mineral or mineral-bearing rock in place only, but are used in the larger sense of designating a located vein or lode claim, and that only non-mineral land, not contiguous to the vein or lode claim, may be appropriated for mill-site purposes, and deciding again, as was previously decided in a former case,[6] that a mill site could not be entered or patented, which was contiguous to a mining claim. The department also decided that a group of lode claims is entitled to only one mill site, regardless of the number of claims in the group.[7] In both cases the land department held as follows: That all applications for mill-site patents which may be made and carried to entry before July 1, 1906, or which, by protest or otherwise, without the fault of the applicant, may be prevented from being carried to entry before that date, where the locations of the claims were made and perfected under the law in all other respects prior to January 1, 1904, shall be adjudicated, in respect to the matter of contiguity of the mill-site claims to vein or lode claims, under the practice which prevailed in the general land-office prior to the departmental ruling in the case of the Alaska Copper Company.

In Alaska, the boundary line of a mill-site location cannot be lawfully laid within sixty feet of the shore line of navigable streams, inlets, gulfs, bays, or seas.[8]

§ 91. **Ownership of mine not necessary.** It is not necessary, in order to have a mill site, to own a mine. It may be taken solely for the purpose of milling or smelting.[9]

§ 92. **Must be used for mining or milling purposes.** It is necessary that a mill site be used or occupied by the proprietor of the vein or lode for mining or milling purposes.

[6] In re Alaska Copper Co., 32 Land Dec. 128.
[7] In re Brick Pomeroy Mill-site Co., 34 Land Dec. 320.
[8] Alaska Copper Mine, 32 Land Dec. 128.
[9] Valcalda v. Silver Peak Mines, 86 Fed. Rep. 90, 29 C. C. A. 591, 19 Morr. Min. Rep. 233; Hartman v. Smith, 7 Mont. 19, 14 Pac. Rep. 648.

Some step in or directly connected with the processes of mining, or some feature of milling, must be performed upon it, or some recognized agency of operative mining or milling, must occupy the mill site at the time the patent is applied for, to come within the purview of the statute.[10]

§ 93. What constitute mining or milling purposes. The statute does not mention any particular kind of mining purpose for which it shall be used; and therefore, if used in good faith for any mining purpose at all, in connection with a lode mining claim, such use is within the meaning of the statute. It is certainly not intended that it shall be used for such work as is done upon the mine itself; for the land must be non-mineral, and not adjacent to the mining claim. It cannot be said, under this statute, what shall be the extent of the use,— whether much or little,— or the particular character of the use. The phrase "mining purposes" is very comprehensive, and may include any reasonable use for mining purposes which the quartz-lode mining claim may require for its proper working and development. This may be very little, or it may be a great deal. The locator of a quartz-lode mining claim is required to do only a hundred dollars' worth of work each year, until he obtains a patent therefor. But if he does only this amount, and uses the mill site in connection therewith, is not this the use of the mill site for a mining purpose, in connection with the mine? Who shall prescribe what shall be the kind and extent of the use under this statute, so long as it is used in good faith, in connection with the mining claim, for a mining purpose?[11]

In another case the land department said: "There is a sense, of course, in which the ownership of a mill in the vicinity of mine, for crushing or reducing ores, by one who is also the owner of the mine, may promote the development of the mine, but so also, doubtless, to some extent, might the development of the mine be hastened or promoted by the ownership or interest of such mine-owner in a stock

[10] Alaska Copper Co., 32 Land Dec. 128, where the structures upon the mill site applied for and rejected consisted of a boarding-house, store, sawmill, and wharf.

[11] Hartman v. Smith, 7 Mont. 19, 14 Pac. Rep. 648.

of mining implements or machinery kept in a general supply-store in the neighborhood, or by his ownership of or interest in a tramway or railway built to bring in supplies and carry out mining products to and from the nearest mining camp. But in all these instances the connection between the ownership or interest in the thing mentioned and the development of the claim or the extraction of ore therefrom is too remote to justify holding such thing to be an improvement upon or for the benefit of the claim; or the crediting of the value or any part thereof toward the required expenditure." [12]

§ 94. **Number of mill sites.** But the statute does not contemplate the location of a separate mill site for each one of a group of contiguous lode claims, held and worked under a common ownership.[13] Whilst no fixed rule can be established, it seems plain that, ordinarily, one mill site affords abundant facility for the promotion of mining operations upon a single body of lode claims. It is not to be supposed that Congress intended granting an equal number of such tracts as rightfully incident to all the lode claims of a compact group, held and worked under a common ownership. Every provision for the disposal of the public domain is intended to subserve some substantial, useful purpose. There is nothing in the language or in the reason of the statute to permit a mill site to be taken and recorded in connection with each mining claim in such a group as is referred to. A separate mill site, therefore, cannot be regarded or allowed as supplementary to each of the lodes located in such case.[14] In one instance it was held that two mill sites might be taken up by the same owner, if both did not aggregate over five acres.[15]

In a recent case the applicant, a corporation, was the owner of a group embracing four lode claims, and wished to patent four mill sites in connection with the group. The mill sites were about one half mile distant from the group

[12] Highland, Marie and Manilla Lode Min. Claims, 31 Land Dec. 37.
[13] In re Alaska Copper Co., 32 Land Dec. 128.
[14] In re Alaska Copper Co., 32 Land Dec. 128.
[15] In re J. B. Haggin, 2 Land Dec. 755.

of mining claims. The department said: "The statute clearly contemplates that at the time the application for patent is made the land included in the mill-site claim is used or occupied for mining or milling purposes. Some step in or directly connected with the process of mining or some feature of milling must be performed upon, or some recognized agency of operative mining or milling must occupy, the mill site at the time application for patent is filed. So far as the record in this case shows, aside from the digging of three wells, nothing has been done on the mill sites. The design to use all of them for the purpose of a reservoir for water, and the building of a reduction-works, is not the present active employment of any mining agency upon the land or the direct using of it for milling purposes. Neither is the storing of ore upon each mill site, under the circumstances of this case, such a use of the land as to warrant the entry and patent of the four mill sites. It was stated in the Alaska Copper Company case,[16] 'that whilst no fixed rule can well be established, it seems plain that, ordinarily, one mill site affords abundant facility for the promotion of mining operations upon a single body of lode claims.' It follows that if more than one mill site is applied for in connection with a group of lode claims, a sufficient and satisfactory reason therefor must be shown. The storage of a quantity of ore upon each of the four mill sites in this case, where there is nothing to show but that the area embraced in one of them would be ample for such storage, is but a mere colorable use of the mill sites, which does not satisfy the requirements of the statute. It thus appearing that the mill-site claims are not used or occupied for mining or milling purposes in connection with the lode claim as required by law, the entry must be canceled."[17]

§ 95. **Question of law and fact.** What constitutes the use of land as a mill site for mining and milling purposes is a mixed question of law and fact.[18]

[16] In re Alaska Copper Co., 32 Land Dec. 128, 130.
[17] Hard Cash and Other Mill-site Claims, 34 Land Dec. 327, 328.
[18] Silver Peak Mines v. Valcalda, 79 Fed. Rep. 886, 890.

CHAPTER X.

WHO MAY MAKE LOCATION.

§ 96. In general.
§ 97. Aliens.
§ 98. Same. Alien may hold by transfer.
§ 99. Same. Inheritance by alien.
§ 100. Location by agent.
§ 101. Same. Ratification by principal.
§ 102. Same. Proof of ratification.
§ 103. Same. Estoppel of employee to assert interest in claim.
§ 104. Corporations.
§ 105. Infants.
§ 106. Employees of general land-office.

§ 96. In general. The Federal mining laws[1] expressly designate as competent to locate mining claims those persons who "are citizens of the United States, and those who have declared their intention to become citizens."[2] As was well said by the Washington supreme court,[3] "In the absence of positive law forbidding it, any person, whether minor or adult, citizen or alien, may lawfully locate upon and take possession of a part of the unsurveyed public domain, and rest secure in that possession until the government calls it in question. No individual or person may lawfully interfere, and the courts may be invoked to restrain unlawful interferences. This right to maintain possession as against individuals who can acquire no higher right owes its present authority, if not its origin, to the necessity of preserving the peace of society, and of protecting the individual from arbitrary aggressions; and, this being its purpose, the argument in its favor is just as potent when applied to an alien or minor as it is when applied to a citizen of lawful age.

[1] § 2319; 5 Fed. Stats. Ann., p. 4.

[2] See O'Reilly v. Campbell, 116 U. S. 418, bk. 29 L. ed. 669, 6 Sup. Ct. Rep. 421; North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 524, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529. See also Burke v. McDonald, 2 Idaho 646, 33 Pac. Rep. 49, 17 Morr. Min. Rep. 32; Rosenthal v. Ives, 2 Idaho 244, 12 Pac. Rep. 904, 15 Morr. Min. Rep. 324.

[3] Davis v. Dennis (Wash., 1906), 85 Pac. Rep. 1079.

The rule has its foundation in the necessities of the state; its duty for the sake of peace to protect all within its borders in all lawful avocations." Nor does the law deem it a fraud upon the government for a prospector to locate a mining claim in the name of a non-resident, and to receive back a deed to the property from such non-resident, where he has made no misrepresentations to such non-resident as to the transfer, and in the absence of any miners' rules or regulations disqualifying non-residents from locating on mining claims.[4]

Coal-lands. In those states in which no right or title in the wife's property vests in the husband by virtue of marital relation, she may, if otherwise duly qualified, purchase coal-lands in her own and exclusive interest. And whilst the arrangement between them for the procurement by her from her husband of the purchase-money would, in such cases, stand upon the same footing as a like transaction between any two individuals, yet, in view of the peculiar personal relations which exist between husband and wife, the land department is entitled to specific proof that she does not really purchase in the interest of her husband.[5]

§ 97. Aliens. In some cases, notably some of the earlier ones, it has been expressly decided that a location by an alien of a mining claim was absolutely void,[6] even although the next day after posting his notice of location he files his declaration of intention to become a citizen.[7] And it has been further held, under this strict rule, that if the first claimant who locates upon a mining claim is not a citizen of the United States, the ground staked off by him is open to location by any citizen of the United States.[8]

[4] Rush v. French, 1 Ariz. 99, 25 Pac. Rep. 816.

[5] Jesse E. Oviat, 35 Land Dec. 235.

[6] North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529; Lee v. Justice Min. Co., 2 Colo. App. 112, 29 Pac. Rep. 1020; Rosenthal v. Ives, 2 Idaho 244, 12 Pac. Rep. 904, 15 Morr. Min. Rep. 324; Bohanon v. Howe, 2 Idaho 417, 17 Pac. Rep. 583.

[7] Anthony v. Jillson, 83 Cal. 296, 23 Pac. Rep. 419, 16 Morr. Min. Rep. 26.

[8] Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120.

The more modern doctrine, and the one expressly laid down by the United States supreme court, which is recognized as the ruling doctrine by the courts at this time, is, that the location of a mining claim by an alien, and all the rights following such location, are voidable, not void, and are free from attack by any one, except the government.[9]

Where a location has been made by an alien, who subsequently declares his intention of becoming a citizen, and there are no intervening rights, the declaration of intention has the effect to operate by relation to the date of location, and validate the claim.[10]

The act of Congress of May 14, 1898,[11] according to native-born citizens of Canada the same mining rights and privileges in Alaska as are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, is not, and never has been, operative, for the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands on the payment of a stated royalty, and the mining laws of the United States make no provisions for such leases.[12]

§ 98. **Same. Alien may hold by transfer.** But, although an alien may possibly not make a valid location, he may nevertheless accept a deed of a mining claim by a qualified locator, which will operate as a transfer of the claim, subject

[9] McKinley Creek Min. Co. v. Alaska United Min. Co., 183 U. S. 563, bk. 46 L. ed. 331, 22 Sup. Ct. Rep. 84, 21 Morr. Min. Rep. 730; Manuel v. Wulff, 152 U. S. 505, bk. 38 L. ed. 532, 14 Sup. Ct. Rep. 651, 18 Morr. Min. Rep. 85; Phillips v. Moore, 100 U. S. 208, bk. 25 L. ed. 603. See also Billings v. Aspen Min. & S. Co., 51 Fed. Rep. 338, 2 C. C. A. 252; s. c. 52 Fed. Rep. 250, 3 C. C. A. 69; Shea v. Nilima, 133 Fed. Rep. 209, 215, 66 C. C. A. 263.

[10] Lone Jack Min. Co. v. Megginson, 82 Fed. Rep. 89, 27 C. C. A. 63; Manuel v. Wulff, 152 U. S. 505, bk. 38 L. ed. 532, 14 Sup. Ct. Rep. 651, 18 Morr. Min. Rep. 85, reversing Wulff v. Manuel, 9 Mont. 276, 279, 286, 23 Pac. Rep. 723; Croesus Min., M. & S. Co. v. Colorado L. & M. Co., 19 Fed. Rep. 78, 82.

[11] 2 U. S. Comp. L., p. 1424; 30 Stats. at L., ch. 299, § 13, p. 415; 5 Fed. Stats. Ann., p. 8.

[12] Regulations and Instructions, 32 Land Dec. 424, 445.

to question, by the government only, in respect to the citizenship of the grantee, upon proceedings to obtain patent.[13]

§ 99. Same. Inheritance by alien. It seems, also, that an alien may acquire by inheritance a valid estate or interest in a mining claim. But whether or not he may do so depends, not upon the Federal laws, but upon the laws of the local jurisdiction wherein the mining claim is situated.[14]

§ 100. Location by agent. A valid location of a mining claim may be made by one person in the name of another, as agent for the latter.[15] And wherever there is a local custom permitting a location of a mining claim to be made by an agent, it is not necessary that the person in whose name a location is made should be aware that it has been made.[16] It has been said, however, that, in the absence of such a custom, there must be either authority in the first instance, or a ratification.[17]

One in the employ of the owner of a mining claim, as his agent, to look after and preserve the property and find a buyer therefor, cannot lawfully relocate the claim for his own benefit, for the reason that a fiduciary relation exists between them respecting the property.[18]

[13] Manuel v. Wulff, 152 U. S. 505, bk. 38 L. ed. 532, 14 Sup. Ct. Rep. 651, 18 Morr. Min. Rep. 85. See also Territory v. Lee, 2 Mont. 124, 6 Morr. Min. Rep. 218.

[14] Billings v. Aspen Min. & S. Co., 51 Fed. Rep. 338, 2 C. C. A. 252, wherein it was held that, under the Colorado acts of November 4, 1861, and April 2, 1887, aliens may inherit an interest in a mining claim situated in that state.

[15] **U. S.** Ledoux v. Forester, 94 Fed. Rep. 600; McCulloch v. Murphy, 125 Fed. Rep. 147; Doe v. Waterloo Min. Co., 70 Fed. Rep. 155, 17 C. C. A. 190, 18 Morr. Min. Rep. 265.

Cal. Gore v. McBrayer, 18 Cal. 583, 1 Morr. Min. Rep. 645; Thompson v. Spray, 72 Cal. 528, 14 Pac. Rep. 182; Moore v. Hamerstag, 109 Cal. 122, 41 Pac. Rep. 805, 18 Morr. Min. Rep. 256.

Colo. Murley v. Ennis, 2 Colo. 300, 12 Morr. Min. Rep. 360.

Idaho. Schultz v. Keeler, 2 Idaho 532, 21 Pac. Rep. 418, 17 Morr. Min. Rep. 198; Dunlap v. Pattison, 4 Idaho 173, 12 Pac. Rep. 504.

[16] Morton v. Solambo Copper Min. Co., 26 Cal. 527, 528, 4 Morr. Min. Rep. 463.

[17] See Thompson v. Spray, 72 Cal. 528, 14 Pac. Rep. 182.

[18] Lockhart v. Rollins, 2 Idaho 503, 21 Pac. Rep. 413, 16 Morr. Min. Rep. 16.

As to estoppel of employees, see post, § 103.

§ 101. **Same. Ratification by principal.** When a location is made for an absent locator, whether with or without authority, or with or without his knowledge, whatever rights are given to him by such location vest in him at once; and even the person locating such absentee, without authority, cannot take down the name of such absentee and insert another, even if he do it before the absent locator has knowledge of the fact that he has been located.[19]

§ 102. **Same. Proof of ratification.** One in whose name a mining claim has been located is presumed, prima facie, to assent thereto.[20] The bringing of a suit to quiet title to a mining claim, by a person in whose name the claim was located by an agent for him, without his knowledge, is a sufficient ratification of the original act of location.[21]

§ 103. **Same. Estoppel of employee to assert interest in claim.** One employed to locate mining claims for another, who locates a lode mining claim for his employer, and in his employer's name, and who, in his receipt for wages for such employment, represents to his employer that the claim is a prior location, and the first claim located in the district, and thereby induces his employer to take possession and spend a large amount of money in developing it, is estopped from thereafter asserting that he had, in his own interest, made a prior location of the same ground as a placer mining claim.[22]

§ 104. **Corporations.** The Federal mining laws expressly recognize the right of a corporation to make locations of mining claims, by the provisions providing for proof of citizenship in the case of a corporation organized under the laws of the United States, or of any state or territory thereof.[23]

[19] Rush v. French, 1 Ariz. 99, 25 Pac. Rep. 816.
[20] Van Valkenburg v. Huff, 1 Nev. 142, 9 Morr. Min. Rep. 467.
[21] Thompson v. Spray, 72 Cal. 528, 14 Pac. Rep. 182.
[22] Fuller v. Harris, 29 Fed. Rep. 314.
As to relocation by an employee of owner for his own benefit, see ante, § 100.
[23] McKinley v. Wheeler, 130 U. S. 630, bk. 32 L. ed. 1048, 9 Sup.

§ 105. **Infants.** The Federal statute does not forbid the location of a mining claim by an infant, and in a number of cases such locations have been sustained by the courts.[24]

§ 106. **Employees of general land-office.** The Federal statutes[25] expressly prohibit officers, clerks, and employees in the general land-office from acquiring public lands; and it is held that mineral surveyors of the Federal government are within the purview of this statute, and hence are disqualified from making a valid location, or from doing any of the acts upon the performance of which, under the provisions of the Federal mining laws, the right of making an entry or purchase from the government depends.[26] So, too, a forest ranger is an employee of the general land-office, within the meaning of this statute, and, as such, is prohibited from "purchasing or becoming interested in the purchase of any of the public land," regardless of whether actually employed or on furlough at the time of presenting his application.[27]

Ct. Rep. 638, 16 Morr. Min. Rep. 65; Dahl v. Montana Copper Co., 132 U. S. 264, bk. 33 L. ed. 325, 10 Sup. Ct. Rep. 97; North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529; Thomas v. Chisholm, 13 Colo. 105, 21 Pac. Rep. 1019, 16 Morr. Min. Rep. 122. See also United States v. Trinidad Coal & C. Co., 137 U. S. 160, bk. 34 L. ed. 640, 11 Sup. Ct. Rep. 57.

[24] Thompson v. Spray, 72 Cal. 528, 14 Pac. Rep. 182. And see 5 Fed. Stats. Ann., p. 5.

[25] U. S. Rev. Stats., § 452; 6 Fed. Stats. Ann., p. 212.

[26] Lavagnino v. Uhlig, 26 Utah 1, 71 Pac. Rep. 1046, 99 Am. St. Rep. 808, 22 Morr. Min. Rep. 610, affirmed 198 U. S. 443, 452, bk. 49 L. ed. 1119, 1123, 25 Sup. Ct. Rep. 716.

[27] In re Robert J. Watson, 33 Land Dec. 435. This was an application to purchase timber-land, but the principle would seem to be the same in respect of his right to enter mineral lands.

CHAPTER XI.

DISCOVERY.

§ 107. Necessity of discovery.
§ 108. Same. Placer claims.
§ 109. Same. Tunnel claims.
§ 110. Place of discovery.
§ 111. By whom discovery is to be made.
§ 112. Time of discovery with reference to location.
§ 113. Time to investigate discovery before location.
§ 114. What constitutes valid discovery.
§ 115. Same. Placer claim.
§ 116. Same. Sufficiency as affected by character of contesting claimants.
§ 117. Same. Question of fact.
§ 118. Same. Evidence.
§ 119. Discovery-shaft, or opening.
§ 120. Same. Equivalent of shaft.
§ 121. Same. Shaft must be sunk on unappropriated ground.
§ 122. Same. Time for sinking shaft.
§ 123. Discovery in discovery-shaft not necessary.
§ 124. Additional ground added through amended location.

§ 107. Necessity of discovery. By the express terms of the Federal statute, discovery is an essential element to the appropriation of mineral lands, since it is provided that, until discovery of a vein or lode within the boundaries of the claim located, no location can be made.[1] And one who has entered upon public mineral land, and commenced pros-

[1] **U. S.** Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266; Steele v. Tanana Mines R. Co., 148 Fed. Rep. 678; Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617; Waterloo Min. Co. v. Doe, 56 Fed. Rep. 685, 17 Morr. Min. Rep. 586; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; O'Reilly v. Campbell, 116 U. S. 418, bk. 29 L. ed. 669, 6 Sup. Ct. Rep. 421; Ledoux v. Forester, 94 Fed. Rep. 600; North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299; 9 Morr. Min. Rep. 529; Cheesman v. Shreeve, 40 Fed. Rep. 787, 17 Morr. Min. Rep. 260; Erwin v. Perego, 93 Fed. Rep. 608, 35 C. C. A. 482; Castle v. Womble, 19 Land Dec. 455; Tam v. Story, 21 Land Dec. 440.

Ariz. Field v. Grey, 1 Ariz. 404, 25 Pac. Rep. 793.

pecting for veins of mineral-bearing rock by sinking shafts, but has made no discovery, has no rights in any of the land not actually in his possession, and cannot enjoin a trespass on the land, there being no allegation that the trespass was upon the ground surrounding his shafts, and of which he was in the actual occupancy. The fact that he has posted a notice of location at each of his shafts does not create any new right in him, or enlarge the right he already had.[2] And, also, the mere fact that he was enjoined from continuing his work, and that, too, wrongfully, as judicially determined, does not alter the relative rights of the parties, or entitle the purported locator to an injunction; the rule being that competing prospectors cannot make use of the writ of injunction to secure priority of discovery or location on, or apparent superiority of right to, a mining claim.[3] So, also, where a location is claimed to be invalid by reason of the existence of a valid prior location thereof, the evidence must not only prove acts necessary to constitute a valid location, but must also prove a discovery of mineral thereon by such prior locator, or his assigns, before the initiation of the right sought to be invalidated thereby. The court will not presume a discovery in support of acts of location, from evidence of marking and recording sufficient to sustain a location.[4]

§ 108. Same. Placer claims. A valid location of a placer mining claim cannot be made prior to the valid discovery of mineral within the limits of the claim.[5] But a

Colo. Armstrong v. Lower, 6 Colo. 393, 15 Morr. Min. Rep. 631; Michael v. Mills, 22 Colo. 439, 45 Pac. Rep. 429.

Mont. Upton v. Larkin, 7 Mont. 449, 17 Pac. Rep. 728, 15 Morr. Min. Rep. 401.

Nev. Overman Silver Min. Co. v. Corcoran, 15 Nev. 417, 1 Morr. Min. Rep. 691.

Utah. Lockhart v. Farrell (Utah, 1906), 86 Pac. Rep. 1077.

Wyo. Columbia Copper Min. Co. v. Duchess Min., M. & S. Co., 13 Wyo. 244, 79 Pac. Rep. 385.

[2] Gemmell v. Swain, 28 Mont. 331, 72 Pac. Rep. 662, 98 Am. St. Rep. 570, 22 Morr. Min. Rep. 716.

[3] Harley v. Montana Ore P. Co., 27 Mont. 388, 71 Pac. Rep. 407, 22 Morr. Min. Rep. 550.

[4] Smith v. Newell, 86 Fed. Rep. 56, 59.

[5] Jackson v. Roby, 109 U. S. 440, bk. 27 L. ed. 990, 3 Sup. Ct. Rep. 301; Nevada Sierra Oil Co. v. Miller, 97 Fed. Rep. 681; Steele v.

discovery of mineral on each twenty acres of a placer claim is not essential to a valid location.[6]

§ 109. **Same. Tunnel claims.** The question of discovery in tunnel claims is treated elsewhere.[7]

§ 110. **Place of discovery.** The discovery of mineral must, of course, be within the exterior boundary limits of the claim located.[8] The location of a mining claim, based exclusively on a discovery of mineral within the boundaries of a prior valid location, is void; but if, after the location of such claim, and before the intervention of other interests, other minerals are discovered by the locator, within the limits of his claim, and within the time allowed by the law of the place to perfect his location, his claim would not be vitiated in its entirety.[9]

Claims merely cornering upon each other considered non-contiguous. There is no provision in the mining laws authorizing a locator, by virtue of a discovery of mineral within the limits of one parcel of ground, to embrace in his location another and entirely different parcel, lying wholly without such limits, and having separate and distinct boundaries, merely because the two parcels corner with each other. Tracts so situated are in fact, and in the administration of the mining laws must be considered and treated as constituting, separate and distinct parcels of ground.[10]

§ 111. **By whom discovery is to be made.** A location, on account of discovery of a vein or lode, can only be made by

Tanana Mines R. Co., 148 Fed. Rep. 678; McDonald v. Montana Wood Co., 14 Mont. 88, 35 Pac. Rep. 668, 43 Am. St. Rep. 616.

Compare: Gregory v. Pershbaker, 73 Cal. 109, 14 Pac. Rep. 401, 15 Morr. Min. Rep. 602.

[6] Reins v. Raunheim, 28 Land Dec. 526. See also McDonald v. Montana Wood Co., 14 Mont. 88, 35 Pac. Rep. 668, 43 Am. St. Rep. 616.

[7] See ante, ch. VIII, § 84.

[8] Perego v. Erwin, 85 Fed. Rep. 904, 19 Morr. Min. Rep. 269; Erwin v. Perego, 93 Fed. Rep. 608, 35 C. C. A. 482; Silver City G. & S. Min. Co. v. Lowry, 19 Utah 334, 57 Pac. Rep. 11, 20 Morr. Min. Rep. 55; Sullivan v. Sharp, 33 Colo. 346, 80 Pac. Rep. 1054.

[9] Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 408, 414.

[10] Tomera Placer Claim, 33 Land Dec. 560.

the discoverer, or one who claims under him. If the title to the discovery fails, so must the location, which rests upon it. If a discoverer has himself perfected a valid location on account of his discovery, no one else can have the benefit of his discovery for the purpose of locating adverse to him, except through a location made after he has lost or abandoned his prior right.[11] But, it is not necessary that the locator of a mining claim should be the first discoverer of a vein or lode, in order to make a valid location. If it appears that the locator knew, at the time of making his location, that there had been a discovery of a vein or lode within the limits of his location, he may base his location upon it, and thus avoid the necessity of making a discovery for himself.[12] Nor is it necessary that the work by which the discovery vein or lode is discovered and made visible should be made by the locators. It is sufficient if, at the time of location, the vein or lead is exposed to view, and its existence known by the locator, for these facts would be equivalent to discovery.[13]

Not only must the locator have knowledge of the former discovery, but such actual discovery must be adopted and claimed by him, in order to give validity to his location; that is to say, the locator must claim and adopt such previous discovery as his own, and base his location upon it.[14]

Mere knowledge of prior discovery is not enough; the locator must adopt it as his own.[15]

It has been held, however, by the Montana court,[16] that the locator is not confined to the nominal discovery-shaft, but may select some other place within the limits of the location, and show a valid discovery there. But that decision

[11] Gwillim v. Donnellan, 115 U. S. 45, bk. 29 L. ed. 348, 5 Sup. Ct. Rep. 1110, 15 Morr. Min. Rep. 482.

[12] McMillen v. Ferrum Min. Co., 32 Colo. 38, 74 Pac. Rep. 461.

[13] Wenner v. McNulty, 7 Mont. 30, 14 Pac. Rep. 643.

[14] McMillen v. Ferrum Min. Co., 32 Colo. 38, 74 Pac. Rep. 161; O'Donnell v. Glenn, 8 Mont. 248, 19 Pac. Rep. 302; Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. Rep. 673, 20 Morr. Min. Rep. 283; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

[15] McMillen v. Ferrum Min. Co., 32 Colo. 38, 74 Pac. Rep. 461.

[16] O'Donnell v. Glenn, 8 Mont. 248, 19 Pac. Rep. 302.

was based upon section two thousand three hundred and twenty of the United States Revised Statutes, which merely provides that "no location of a mining claim shall be made, until the discovery of the vein or lode, within the limits of the claim located," and the court aptly observed that there is no provision for a discovery-shaft in the Federal statute, nor any statute in Montana. The court further said that the fundamental mistake in the argument of counsel in that case, that a locator was not permitted to select at will any shaft besides the nominal discovery-shaft, was, "that it assumes that a notice on the ground, at the point of discovery, is necessary when it is not required by law." Obviously, had there been in Montana, as there is in Colorado, a statute which specifically declares that the locator shall sink a discovery-shaft to the depth of at least ten feet, showing a well-defined crevice, and shall also post at the point of discovery a location-stake, the decision in the Montana case would have been otherwise. And accordingly, where, in states having provisions for discovery-shafts and the posting of notices on the ground, as in Colorado, if the locator himself selects the discovery-shaft as the one in which the discovery of mineral has been made, and there posts his location-stake, and bases his location upon such discovery, he may not, after intervening rights have attached, abandon and disregard the same, neglect to comply with such provisions, and select another discovery upon which his location was not predicated.[17]

§ 112. **Time of discovery with reference to location.** The order of time in which the several acts of location are performed is not of the essence of the statutory requirements, and it is immaterial that the discovery was made subsequently to the completion of the acts of location, provided only all the necessary acts are taken before any intervening rights of third persons accrue;[18] and if all these necessary

[17] McMillen v. Ferrum Min. Co., 32 Colo. 38, 74 Pac. Rep. 461.

[18] North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 530, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529; Weed v. Snook, 144 Cal. 439, 77 Pac. Rep. 1023; Reins v. Raunheim, 28 Land Dec. 526; La

steps have been taken before intervening rights do accrue, it would be useless and idle ceremony, where the discovery follows all the other acts of location, for the locator again to locate his claim, or refile the old location-certificate, or to file a new one.[19] Therefore a discovery, although made after staking and record, will inure to the benefit of the locator as of the date of the actual discovery, provided, of course, that others have not previously acquired rights to the premises upon which the discovery has been made.[20]

The acceptance of entry and the issuance of a patent does not determine as to the order of proceedings prior to the entry, but merely that all the steps required by law have been taken; provided only that all the necessary acts are done before any intervening rights of third persons have accrued.[21]

§ 113. Time to investigate discovery before location. The locator, upon discovering a vein, is always allowed a reasonable time to define the extent of his claim on the ground, as prescribed by the Federal statute.[22] Thus where a sufficient discovery has been made, and the locator sets his discovery-stake on the same day, partially stakes and marks his claim the next day, and completes his staking and mark-

Grande Inv. Co. v. Shaw, 44 Oreg. 416, 72 Pac. Rep. 795, 74 Id. 919; Sharkey v. Candiani (Oreg., 1906), 85 Pac. Rep. 219.

Compare: Upton v. Larkin, 5 Mont. 600, 6 Pac. Rep. 66; 7 Mont. 449, 17 Pac. Rep. 728, 15 Morr. Min. Rep. 404.

[19] Brewster v. Shoemaker, 28 Colo. 176, 63 Pac. Rep. 309, 89 Am. St. Rep. 188, 53 L. R. A. 793, 21 Morr. Min. Rep. 155. See also In re Mitchell, 2 Land Dec. 752; Reins v. Raunheim, 28 Land Dec. 526; Northern Pac. R. Co. v. Marshall, 17 Land Dec. 545; North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 6 Sawy. C. C. 299; 9 Morr. Min. Rep. 529; Cedar Canyon Consol. Min. Co. v. Yarwood, 27 Wash. 271, 67 Pac. Rep. 749, 91 Am. St. Rep. 841, 22 Morr. Min. Rep. 11.

[20] Healey v. Rupp (Colo., 1906), 86 Pac. Rep. 1015, citing numerous cases.

[21] Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266.

[22] **U. S.** Erhardt v. Boaro, 113 U. S. 537, bk. 28 L. ed. 1116, 5 Sup. Ct. Rep. 565, 15 Morr. Min. Rep. 447; Doe v. Waterloo Min. Co., 55 Fed. Rep. 11, 70 Id. 155, 17 C. C. A. 190, 18 Morr. Rep. 265.

Colo. Omar v. Soper, 11 Colo. 380, 18 Pac. Rep. 443, 7 Am. St. Rep. 246, 15 Morr. Min. Rep. 496.

Nev. Gleeson v. Martin White Min. Co., 13 Nev. 442, 9 Morr. Min. Rep. 429.

ing on the third day, it is held that his location will date from the day of discovery.[23] And a locator is also entitled to a reasonable time in which to perfect the development required by the local law.[24]

Discovery-notice of a lode, posted at the point of discovery, containing, in addition to the matters required by statute, the number of feet claimed upon the vein on each side of the point of discovery, protects the discoverer, to the full extent of his claim, from interference by overlapping claims or otherwise, during the statutory period allowed for sinking a discovery-shaft, although the boundaries of the claim are not marked.[25] But where the discovery is not followed by any effort to complete the location of a mining claim, and intervening rights have accrued, a discovery-notice cannot be posted four years afterwards.[26]

§ 114. What constitutes valid discovery. Just what constitutes a discovery is often a serious question, and one difficult of solution. Many definitions of discovery have been given by the courts; but the one probably more generally than any other recognized as embodying more nearly the true rule is that of Judge Hawley:[27] "When the locator finds rock in place containing mineral, he has made a discovery, within the meaning of the statute, whether the rock or earth is rich or poor, whether it assays high or low. It is the finding of mineral in the rock in place, as distinguished from float-rock, that constitutes the discovery, and warrants the prospector in making a location of a mining claim."

When a locator of a mining claim finds rock in place

[23] Burke v. McDonald, 3 Idaho 296, 29 Pac. Rep. 98.

[24] Murley v. Ennis, 2 Colo. 300, 12 Morr. Min. Rep. 360.

[25] Omar v. Soper, 11 Colo. 380, 18 Pac. Rep. 443, 7 Am. St. Rep. 246, 15 Morr. Min. Rep. 496.

[26] Pelican and Dives Min. Co. v. Snodgrass, 9 Colo. 339, 12 Pac. Rep. 206.

[27] Book v. Justice Min. Co., 58 Fed. Rep. 106, 126, 17 Morr. Min. Rep. 617. See also Cheesman v. Shreeve, 40 Fed. Rep. 787, 7 Morr. Min. Rep. 260; Columbia Copper Min. Co. v. Duchess Min. M. & S. Co., 13 Wyo. 244, 79 Pac. Rep. 385, where this definition was quoted with approval.

containing mineral in sufficient quantity to justify his expending his time and money in prospecting and developing the claim, he has made a discovery, within the meaning of the Federal statute, whether the rock or earth is rich or poor, whether it assays high or low, with this qualification: That the definition of a lode must always have special reference to the formation and peculiar characteristics of the particular district in which the lode or vein is found.[28] It is sufficient, whenever a prospector has discovered such indications, that he is willing to spend his time and money in following them, with the expectation of finding ore;[29] it is not necessary that the prospector be "justified" in his expectation of finding ore.[30]

Finding mineral rock in place carrying enough precious metals, or other mineral substances named in the statute, to justify the locator in expending his time and money in prospecting and developing the ground located, is what constitutes a valid discovery. The locator need not be a practical miner, and the probable conduct of the practical miner, or his beliefs, are not regarded as rules or tests of the justification for the guidance of locators.[31] Nor is it required that the discoverer expect to find paying minerals in that particular crevice, or vein, or seam, in which he finds his rock in place bearing metal, before he can make a valid location. If he discover a seam with a well-defined wall, bearing indications of mineral sufficient to justify him in expending his time and money in following it, in expectation of finding a main body of ore of commercial value within the ground located, this will be sufficient.[32]

Mere surface indications, however strong, or the actual existence of ore in adjoining lands, is not sufficient; although, if there is an actual discovery of ore after the location, and

[28] Fox v. Myers (Nev., 1906), 86 Pac. Rep. 793; Cascaden v. Bartolis, 146 Fed. Rep. 739.

[29] Castle v. Womble, 19 Land Dec. 455. See also Shreve v. Copper Bell Min. Co., 11 Mont. 309, 28 Pac. Rep. 315.

[30] Burke v. McDonald, 2 Idaho 1022, 29 Pac. Rep. 98.

[31] McShane v. Kenkle, 18 Mont. 208, 44 Pac. Rep. 979, 56 Am. St. Rep. 578, 33 L. R. A. 851.

[32] McShane v. Kenkle, 18 Mont. 208, 44 Pac. Rep. 979, 56 Am. St. Rep. 578, 33 L. R. A. 851.

before any intervening rights accrue, the location is thereby validated.[33]

The discovery of a vein, or seams of rock in place, bearing minerals, small seams of iron oxide, of quartz, and small quantities of carbonate of lead, two or three inches wide, these indications being of such a character as miners in that district would follow in the expectation of finding ore which would justify them in working the claim for that purpose, and similar in their character to veins which had induced other miners in that district to locate claims which had been developed into well-defined lodes containing ore of great value,— is a sufficient discovery of mineral to support a location thereon, and to show good faith in making such a location.[34]

Under the Idaho statute, the discovery must be followed by doing the location-work within sixty days, which, in itself, is, at least, a partial "exploitation." Where one miner has discovered what he considers mineral indications and deposits, and has followed up that discovery by staking the claim and doing the necessary location-work, and another miner comes along and makes a discovery, and locates a part or all of the same ground covered by the former location, and thereupon goes into court to contest the senior location, and in order to sustain that contest shows that the ground does in fact contain valuable mineral deposits, as contemplated by the Federal statute, and at the same time contends that the senior locator had not made a mineral discovery, the courts will not examine the evidence of the senior discovery with very great strictness. The case is quite different from a contest between the miner and the agriculturist.[35]

§ 115. Same. Placer claim. So, too, in the case of a placer claim, there must be some gold found within the

[33] Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. Rep. 673, 677, 20 Morr. Min. Rep. 283.

[34] Shoshone Min. Co. v. Rutter, 87 Fed. Rep. 801, 806, 31 C. C. A. 223, 19 Morr. Min. Rep. 356.

[35] Ambergris Min. Co. v. Day (Idaho, 1906), 85 Pac. Rep. 109.

limits of the land located, although it cannot be said, as a matter of law, how much must be found in order to warrant a finding that there was in fact a discovery such as the law requires. The question must be decided not only with reference to the gold actually found within the limits of the claim located, but also in view of its situation with reference to other lands known to contain valuable deposits of placer gold, and whether it is rock and soil formation, or such as is usually found where these deposits exist in paying quantities; and further, in considering the evidence bearing on the general question, it must not be forgotten that the object of the law in the discovery to precede location is to insure good faith on the part of the mining locator, and to prevent fraud on the government by persons attempting to acquire patent to lands not mineral in their character.[36]

§ 116. Same. Sufficiency as affected by character of contesting claimants. Sometimes the sufficiency of the discovery of mineral is affected by the character of the contesting claimants. That is, when the controversy is between two mineral claimants, the rule respecting the sufficiency of the discovery of mineral is more liberal than when it is between a mineral claimant and one seeking to make an agricultural or other entry under the land law.[37] The reason for this distinction is said to be, that, when land is sought to be taken out of the category of agricultural land, evidence of its mineral character should be reasonably clear, while in respect to a controversy between rival claimants to mineral lands, the question is, Which one of them is entitled to priority? In Migeon v. Montana Central R. Co., the United States circuit court of appeals[38] points out this distinction in the following manner: "There are four classes of cases where the courts have been called upon to determine what constitutes a lode or vein, within the intent and mean-

[36] Lange v. Robinson (C. C. A.), 148 Fed. Rep. 779.

[37] Chrisman v. Miller, 197 U. S. 313, bk. 49 L. ed. 770, 25 Sup. Ct. Rep. 468.

[38] Migeon v. Montana Cent. R. Co., 77 Fed. Rep. 249, 254, 23 C. C. A. 156, 161, 18 Morr. Min. Rep. 446.

ing of different sections of the Revised Statutes: 1. Between miners who have located claims on the same lode, under the provisions of section two thousand three hundred and twenty;[39] 2. Between placer and lode claimants, under the provisions of section two thousand three hundred and thirty-three;[40] 3. Between mineral claimants and parties holding town-site patents to the same ground; 4. Between mineral and agricultural claimants of the same land. The mining laws of the United States were drafted for the purpose of protecting the bona fide locators of mining-ground, and at the same time to make necessary provision as to the rights of agriculturists and claimants of town-site lands. The object of each section, and of the whole policy of the entire statute, should not be overlooked. The particular character of each case necessarily determines the rights of the respective parties, and must be kept constantly in view, in order to enable the court to arrive at a correct conclusion. What is said in one character of cases may or may not be applicable in the other. Whatever variance, if any, may be found in the views expressed in the different decisions touching these questions arises from the difference in the facts and a difference in the character of the cases, and the advanced knowledge which experience in the trial of the different kinds of cases brings to the court."

So, too, in a recent Alaska case decided by the circuit court of appeals, it was held that, in a contest between a placer mineral claimant and an agricultural claimant, the finding of colors of gold which were fairly good prospects of gold was not a sufficient discovery to warrant holding that the land was mineral land.[41] As was said in that case, "Doubtless, colors of gold may be found by panning in the dry bed of any creek in Alaska, and miners, upon such encouragement, may be willing to further explore in the hope of finding gold in paying quantities. But such prospects are not sufficient to show that the land is so valuable for mineral as to take it out of the category of

[39] U. S. Comp. Stats. 1901, p. 1424.
[40] U. S. Comp. Stats. 1901, p. 1433.
[41] Steel v. Tanana Mines R. Co. (C. C. A.), 148 Fed. Rep. 678.

agricultural lands and to establish its character as mineral land, when it comes to a contest between a mineral claimant and another claiming the land under other laws of the United States."

In another recent Alaska case, which was also a controversy between a mining claimant and an agricultural claimant, it appeared that, prior to making locations of any kind, the mining claimant did not actually discover gold in paying quantities, but he did find some small particles of gold in the claim, and it was held that this was sufficient to give him the right to locate as placer mining claims the lands on which the gold was found.[42]

§ 117. Same. Question of fact. The question whether the locators discovered any vein or lode of quartz or other rock in place bearing gold or silver, within the limits of their location, prior to the location of a crosscutting claim, in an action to quiet title, is one of fact for the jury, or for the court where the cause is tried without a jury.[43]

§ 118. Same. Evidence. The court merely presumes discovery, in support of acts of location, from evidence of work and record sufficient to sustain a location.[44] And where it appears that the original locator is absent from the country, and the validity of the location has been unchallenged for many years, and up to the time of the commencing of the action in which it is brought into controversy, the certificate of location creates the presumption of the discovery of mineral and a valid location.[45] But, in order to establish a sufficient discovery, it is not necessary that the claimant show with reasonable clearness that, for the labor and capital expended in working the ground, it can yield a reasonable profit.[46]

[42] Lange v. Robinson (C. C. A.), 148 Fed. Rep. 799.
[43] Book v. Justice Min. Co., 58 Fed. Rep. 106, 120, 17 Morr. Min. Rep. 617.
[44] Smith v. Newell, 86 Fed. Rep. 56, 60.
[45] Vogel v. Warsing (C. C. A.), 146 Fed. Rep. 949.
[46] Cascaden v. Bartolis (C. C. A.), 146 Fed. Rep. 739.

Evidence of the indications which miners have successfully followed in the same district, and on contiguous ground, in attempting to find a lode or mineral deposit is admissible to aid in determining whether or not a valid mineral discovery has been made by one who attempted to locate a lode claim on similar indications and showing upon adjacent ground. But it is incompatible with the spirit of judicial inquiry to permit a litigant to introduce, for comparison, evidence of indications and conditions found on a particular mining property which led up to a rich ore-body, over which he has absolute control, and from which he may exclude every other person, unless he permits his adversary to examine and inspect the property for the purpose of introducing evidence in rebuttal if he so desires.[47]

Where one claimant bases his right to a location on an imperfect underground discovery subsequent to other discoveries, first set up by him, evidence of such underground discovery is properly rejected, where it appears that the discovery was not made until after the other claimant had made a prior discovery of a vein, and perfected his location thereon.[48] In the case just cited, the court said: "If a miner has discovered certain mineral indications, which he has followed up, with the result that a rich and valuable ore-body has been developed therefrom, it seems clear that another miner, finding similar indications and conditions on contiguous ground or in the immediate vicinity, would be in a measure justified in following up those evidences with a reasonable expectation of finding mineral deposits. And this is true, even though the indications, rock, and deposits found are such as the expert, scientist, geologist, and mineralogist in their finest of theories tell him are not evidence of mineral deposits, or even that they are evidences of the entire absence of mineral. As a matter of fact, and greatly to their credit, these scholars, who have added so largely to the store of knowledge, have been observant and progressive enough to

[47] McMillen v. Ferrum Min. Co., 32 Colo. 38, 74 Pac. Rep. 461.
[48] Ambergris Min. Co. v. Day (Idaho, 1906), 85 Pac. Rep. 109.

from time to time revise and modify their views and theories to keep pace with the actual demonstrations of the man who risks his judgment (though ofttimes a hazard) and delves into the earth at uninviting and unseemly places. The miner, as well as the man engaged in any other occupation or business, is entitled to act on experience and observations, and while he may not, and indeed will not, always attain the same results, the exception to the rule does not preclude him from availing himself of his own observations and those of his fellows, as well as demonstrated existing conditions." We are not, however, without the aid of judicial expression on this question. In Shoshone Mining Company v. Rutter,[49] Judge Hawley, speaking for the court of appeals for the ninth circuit, said: "'The seams, containing mineral-bearing earth and rock, which were discovered before the location was made, were similar in their character to the seams or veins of mineral matter that had induced other miners to locate claims in the same district, which by continued developments thereon had resulted in establishing the fact that the seams, as depth was obtained thereon, were found to be a part of a well-defined lode or vein containing ore of great value. The discovery made at the time of the Kirby location was therefore such as to justify a belief as to the existence of such a lode or vein within the limits of the ground located. The subsequent developments, made after the claim was located and before the location of the Shoshone, show more clearly the existence of a lode or vein.'"

§ 119. **Discovery-shaft, or opening.** In several of the states it is required, either by a local rule or regulation or by statute, that the locator shall sink a discovery-shaft, or opening, within a certain time, and to a specified depth.[50]

A Montana statute[51] provides that "the relocation of an

[49] Shoshone Min. Co. v. Rutter, 87 Fed. Rep. 801, 31 C. C. A. 223, 19 Morr. Min. Rep. 356.

[50] Northmore v. Simmons, 97 Fed. Rep. 386, 38 C. C. A. 211, 20 Morr. Min. Rep. 128.

[51] Mont. Stats., § 3615.

abandoned lode or placer claim must be made by sinking a new discovery-shaft and fixing new boundaries in the same manner as if it were an original location . . . or the relocator may sink the original discovery-shaft ten feet deeper, in which case the declaratory statement must give the depth and dimensions of the original discovery-shaft at the date of such relocation." Under this statute, a declaratory statement of relocation of an abandoned claim which fails to show the dimensions and location of discovery-shaft, or its equivalent, or that the original discovery-shaft was sunk ten feet deeper, is insufficient.[52] Another section[53] provides that the locator must sink a shaft on the lode or claim to a depth of at least ten feet from the lowest part of the rim of the shaft at the surface, or deeper, if necessary to show a well-defined crevice or valuable deposit. As an equivalent, a cut, crosscut, or tunnel which cuts a lode at the depth of ten feet below the surface, or an open cut of at least ten feet in length along the lode from the point of discovery, is deemed sufficient. Under section three thousand six hundred and twelve, the declaratory statement must show the dimensions of the discovery-shaft, or its equivalent, sunk on lode or placer claim. The evident purpose of the latter section is that it may appear of record that the requirements of section three thousand six hundred and eleven have been complied with, and hence that the locator may appear to one examining the statement to be vested with the inchoate title. It has been repeatedly held by the supreme court of that state, not that the provisions of the sections referred to are valid, but that they are mandatory, and must be substantially complied with, in order that the locator may acquire any right under his location.[54] On writ of error to the supreme court of the United States in the last case, the validity of this statute was

[52] Wilson v. Freeman, 29 Mont. 470, 75 Pac. Rep. 84, 68 L. R. A. 833.

[53] § 3611.

[54] Purdum v. Laddin, 23 Mont. 387, 59 Pac. Rep. 153; Hahn v. James, 29 Mont. 1, 73 Pac. Rep. 965; Wilson v. Freeman, 29 Mont. 470, 75 Pac. Rep. 84, 68 L. R. A. 833; Mares v. Dillon, 30 Mont. 117, 75 Pac. Rep. 963; Baker v. Butte City Water Co., 28 Mont. 222, 72 Pac. Rep. 617, 104 Am. St. Rep. 683.

upheld.[55] In Purdum v. Laddin [56] it was held that the declaratory statement must contain "the location and description of each corner, with the markings thereon." In Hahn v. James [57] it was said: "While all the other steps prior to the record of the notice may have been taken, yet, without the record in substantial compliance with the statute, the location is of no value." So in Wilson v. Freeman,[58] it was held that if the location under which title is claimed be a relocation of an abandoned claim, the requirements of section three thousand six hundred and fifteen of the Political Code, both as to the acts done and the contents of the record, must be substantially observed. And in Dolan v. Passmore [59] the preliminary statement stated that, for the purpose of perfecting the location of the claim in question as required by law, the locators had "dug a tunnel at the point of discovery, of the following dimensions: about twelve feet long, six by four and a half cut three feet deep, six feet wide, wherein is disclosed a well-defined crevice and valuable deposit of ore." It was held that this statement did not meet the requirements of section three thousand six hundred and twelve, in that it did not appear that a vein or lode was cut at the depth of ten feet below the surface; if, instead of sinking a shaft to the depth of ten feet in the clear upon the vein, the equivalent work is done, it must be either by cut, crosscut, or tunnel cutting the vein at a depth of at least ten feet, or by an open cut at least ten feet in length along the vein, and it must appear from the record that this has been done; that "a failure to observe these requirements is fatal to the location, for the record cannot be supplemented by proof of what was actually done." And a declaratory statement, the only reference to a discovery-shaft in which was, that the claim was a relocation of a certain lode claim on which the discovery was a shaft ten feet in depth and four and a half feet in size, but not that

[55] Butte City Water Co. v. Baker, 196 U. S. 119, bk. 49 L. ed. 409, 25 Sup. Ct. Rep. 211.

[56] 23 Mont. 387, 59 Pac. Rep. 153.

[57] 29 Mont. 1, 73 Pac. Rep. 965.

[58] 29 Mont. 470, 75 Pac. Rep. 84, 68 L. R. A. 833.

[59] Mont., 1906; 85 Pac. Rep. 1034.

these were its dimensions at the date of relocation, and which contains no reference to a discovery-shaft, except the recital, "from the center of discovery-shaft which is an open cut ten feet deep," and "beginning at an open cut which is the point of discovery,"—is insufficient, neither recital being sufficient to give as a fact the dimensions and location of the discovery-shaft, or its equivalent.[60]

In Colorado it is incumbent upon the locator to sink a discovery-shaft within sixty days after the date of location, and to do other acts within ninety days from that date. Failing therein, he acquires no right in the claim.[61] If, however, a prior locator intended to do so at the time of posting his notice, and continuously thereafter holds and maintains the purpose and intention to complete the location, but is prevented from doing so by the wrongful acts of one who enters thereon for the purpose of making another location, and cannot, by the use of reasonable diligence, obtain possession for the purpose of doing the necessary work at the place of his discovery, but is excluded therefrom by the subsequent locator, such subsequent locator can derive no advantage therefrom; to permit him to do so would be to permit him to derive an advantage from his own wrong.[62] So, also, though the locator of a mining claim may not have sunk his shaft to the discovery of mineral in place prior to filing his location-certificate, yet, if he shall thereafter so sink the shaft and disclose the lode, he will hold as against all who had not theretofore acquired an interest in the lode, the same as if he had uncovered it before the survey and filing of the certificate, such discovery relating back to the location.[63]

§ 120. **Same. Equivalent of shaft.** In Colorado, the statute[64] provides that "any open cut, crosscut or tunnel

[60] Wilson v. Freeman, 29 Mont. 470, 75 Pac. Rep. 84, 68 L. R. A. 833.

[61] Van Zandt v. Argentine Min. Co., 8 Fed. Rep. 725, 727, 4 Morr. Min. Rep. 441.

[62] Erhardt v. Boaro, 8 Fed. Rep. 860, 862, 113 U. S. 527, bk. 28 L. ed. 1113, 5 Sup. Ct. Rep. 560, 4 Morr. Min. Rep. 132, 15 Id. 447, 472.

[63] Zollars v. Evans, 5 Fed. Rep. 172, 2 McC. C. C. 39, 4 Morr. Min. Rep. 407; Strepey v. Stark, 7 Colo. 614, 5 Pac. Rep. 111, 17 Morr. Min. Rep. 28.

[64] Gen. Laws, p. 630, § 7.

which shall cut a lode at the depth of ten feet below the surface, shall hold such lode, the same as if a discovery-shaft were sunk thereon, or an adit of at least ten feet in along the lode from the point where the lode may be in any manner discovered, shall be equivalent to a discovery-shaft"; and it is held that the legislature contemplated that, as to the ten feet required, it might be either upon or under cover, or open in part and under cover in part, dependent upon the nature of the ground.[65] Under this statute, an open cut, a crosscut, a tunnel, and an adit are each the equivalent of a discovery-shaft. While it is expressly provided that the first three shall cut the lode at a depth of ten feet below the surface, there is no such requirement in the case of an adit.[66]

An adit run along a lode, where it may in any manner be discovered, is equivalent to a discovery-shaft, whether the depth of ten feet from the surface be reached or not.[67] The statute makes an open cut, a crosscut, a tunnel, and an adit each the equivalent of a discovery-shaft.[68] But the development must be such, in dimensions and character, as to make it fairly the equivalent of a discovery-shaft.[69]

§ 121. Same. Shaft must be sunk on unappropriated ground. The locator of a mining claim must sink his shaft on territory which he has a right to appropriate. He may not sink it upon ground embraced in a prior and subsisting location.[70] But a discovery-shaft partly within a patented claim and partly within the location claimed by reason of such discovery constitutes a valid discovery.[71]

Where an applicant for a mineral patent permits a junior adverse applicant to include in his claim the land embracing

[65] Electro-Magnetic Min. & D. Co. v. Van Auken, 9 Colo. 204, 11 Pac. Rep. 80.

[66] Id.

[67] Gray v. Truby, 6 Colo. 278.

[68] Electro-Magnetic Min. & D. Co. v. Van Auken, 9 Colo. 204, 11 Pac. Rep. 80.

[69] Id.

[70] Armstrong v. Lower, 6 Colo. 393, 15 Morr. Min. Rep. 458, 631.

[71] Upton v. Larkin, 7 Mont. 449, 17 Pac. Rep. 728, 15 Morr. Min. Rep. 404.

the discovery on which such earlier claim rests, under an agreement that the land in conflict will be decded to the holder of said claim on securing title thereto, said action will not be held to work such a loss of the discovery on the part of the prior applicant as will defeat his entire location, it appearing that said agreement has been carried into effect, that said applicant has at all times been in possession of the ground in question, and that said discovery and improvements were not made the basis on which patent was secured under the junior location.[72]

§ 122. **Same. Time for sinking shaft.** The question as to what is a reasonable time for sinking a discovery-shaft in a mine is one of law, when the facts are undisputed; but if there are elements tending to delay, the question is for the jury.[73]

§ 123. **Discovery in discovery-shaft not necessary.** The land department has held that it is not necessary that mineral be discovered in the discovery-shaft; that it is the discovery of mineral that entitles the discoverer to a claim, and it is equally meritorious, whether in the discovery-shaft or in any other part of the surface-ground of the claim, since the Federal statute is silent as to where it shall be first made.[74]

§ 124. **Additional ground added through amended location.** Where additional ground is added to a mining claim by means of an amended location, regularly perfected, it is not necessary that a new discovery of mineral be made thereunder.[75]

[72] Duxie Lode, 27 Land Dec. 88.

[73] Patterson v. Hitchcock, 3 Colo. 533, 5 Morr. Min. Rep. 542, holding that where a discovery-shaft is actually sunk in twenty-five days of work, the locator cannot claim eighty-five days as a reasonable time to sink it, when there are no reasons for delay.

[74] Wight v. Tabor, 2 Land Dec. 738. See also O'Donnell v. Glenn, 8 Mont. 248, 19 Pac. Rep. 302.

Compare: Erhardt v. Boaro, 8 Fed. Rep. 692, 113 U. S. 537, bk. 28 L. ed. 1116, 5 Sup. Ct. Rep. 565, 4 Morr. Min. Rep. 432, 15 Id. 447, 472.

[75] Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 389, 399.

CHAPTER XII.

EXTENT, SIZE, AND SHAPE OF MINING CLAIMS.

§ 125. In general.
§ 126. Tunnel claims.
§ 127. Placer claims.
§ 128. Effect of excessive size.
§ 129. Same. Reformation of lines.
§ 130. Shape of claim. Lode claims.
§ 131. Same. Placer claims.

§ 125. In general. The Federal statute, as it now exists, explicitly provides that, as to locations made prior to the enactment of the statute, all mining claims are to be governed, as to the length, etc., by the customs, regulations, and rules in force at the date of the location.[1] But a mining claim, located under the present statute, may equal, but cannot exceed, fifteen hundred feet in length along the vein or lode, and must not extend more than three hundred feet on each side of the middle of the vein at the surface, nor can any claim be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights, existing at the time of the enactment, render such a limitation necessary.[2]

A statute of Montana, enacted in 1864, allowed to a locator "fifty (50) feet on each side of the lode," and was construed to mean that the measurement should be made from the outer walls of the vein.[3] The rule in that state now, and almost everywhere else, is to measure from the center of the vein.

In Colorado, a location may include one thousand five hundred feet along the linear course of the lode or vein, but

[1] See Prosser v. Parks, 18 Cal. 47, 4 Morr. Min. Rep. 452, Table Mountain Tunnel Co. v. Stranahan, 31 Cal. 387, involving this question.

[2] U. S. Rev. Stats., § 2320; 5 Fed. Stats. Ann., p. 8; 3 U. S. Comp. Stats. 1901, p. 1421.

[3] Foote v. National Min. Co., 2 Mont. 402, 9 Morr. Min. Rep. 605; so holding under a Montana statute passed December 26, 1864.

must not exceed in width one hundred and fifty feet on each side of it,[4] except in the counties of Clear Creek, Gilpin, Boulder, and Summit, where the width is limited to seventy-five feet on each side of the vein.[5]

§ 126. **Tunnel claims.** The question of tunnel claims, in respect to size, etc., is treated elsewhere.[6]

§ 127. **Placer claims.** The Federal statutes provide that legal subdivisions of forty acres may be subdivided into ten-acre tracts, and that two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after July 9, 1870, can exceed one hundred and sixty acres for any one person, or association of persons.[7] Accordingly, it is held to be contrary to the provisions of the law and the policy of the government, for one person to acquire more than twenty acres of placer-ground by one location, and the acquisition of a larger quantity, by using the names of persons who are merely employees of the locator, and are not bona fide locators, is a violation of the law in respect to placer claims.[8]

§ 128. **Effect of excessive size.** In Montana it has been held that a location exceeding in length the statutory limit is absolutely void, and the tendency there is to require strict accuracy of boundaries.[9] But in other courts, both state and Federal, a more liberal rule is followed, and it is accordingly held that, in the absence of fraud, the claim will be held void

[4] Stevens v. Williams, 1 McC. C. C. 480, 23 Fed. Cas. No. 13414, 1 Morr. Min. Rep. 566.

[5] Mill's Ann. Colo. Stats., par. 3149; Gen. Stats. 1883, par. 2398.

[6] See ante, ch. VIII.

[7] U. S. Rev. Stats., § 2330; 5 Fed. Stats. Ann., p. 42; 2 U. S. Comp. Stats. 1901, p. 1432.

[8] Durant v. Corbin, 94 Fed. Rep. 382, 20 Morr. Min. Rep. 84; Gird v. California Oil Co., 60 Fed. Rep. 531, 545, 18 Morr. Min. Rep. 45.

[9] See Leggatt v. Stewart, 5 Mont. 107, 2 Pac. Rep. 320, 15 Morr. Min. Rep. 358.

only as to the excess.[10] And where the locator of a mining claim includes within his boundary lines a greater area of surface than he is permitted to hold under the statutes, he is entitled, nevertheless, to hold to the limit which the law authorizes, and only the territory in excess of these limits embraced within his boundaries is to be rejected.[11]

Excessive claim, through innocent mistake, caused honestly, through an inaccurate method of measurement, and without any intention to include a greater amount than the limits of the grant, does not invalidate the location, the notice posted on the claim stating that only the length and width allowed by law was claimed, giving the point of beginning and direction of the boundary lines.[12] It was said by the court in this case: "We do not mean to be understood that any length, however great, in excess of the limit of the grant, can be located without rendering the claim void for want of certainty. A mining claim may include so great an excess of ground as to render it absolutely void, depending upon the surroundings and particular circumstances of each case. But what we do mean to say is, that, under the particular circumstances of this case, the excess within the boundaries of the Blue Rock does not render the same void. The object of the law requiring the claim to be distinctly marked on the ground, so that its boundaries can be readily traced, was in this case accomplished."

§ 129. **Same. Reformation of lines.** If a claim, as located, is excessive in length and width, another cannot, by a subsequent location, appropriate such excess by extending his subsequent location over a portion of the prior location wherein the prior locator is actually engaged in developing

[10] **U. S.** Richmond Min. Co. v. Rose, 114 U. S. 576, bk. 29 L. ed. 273, 5 Sup. Ct. Rep. 1055; Walton v. Wild Goose M. & T. Co., 123 Fed. Rep. 209, 60 C. C. A. 155, 22 Morr. Min. Rep. 688; Glacier Mountain Silver Min. Co. v. Willis, 127 U. S. 471, bk. 32 L. ed. 172, 8 Sup. Ct. Rep. 1214, 17 Morr. Min. Rep. 127; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

Idaho. Stemwinder Min. Co. v. Emma & L. C. Consol. Min. Co., 2 Idaho 456, 21 Pac. Rep. 1040.

[11] McElligott v. Krogh, 90 Pac. Rep. (Cal.) 823.

[12] Hausen v. Fletcher, 10 Utah 266, 37 Pac. Rep. 480.

the mine and extracting ore. The prior locator is entitled to make selection for himself of the portion which he wishes to retain, and the portion which he will exclude as the excess, and to reform his lines accordingly; provided, of course, that he does not interfere with any rights on ground acquired prior to his own location.[13]

Strict accuracy in the marking of a claim is not always expected nor required. The character of the ground over which the locator must make his measurements must be considered; if it is even, and view unobstructed, greater accuracy will be required than when the surface is broken and covered with timber. Of course, if a claim is made excessive in size with fraudulent intent, it is void; and if made so large that it cannot be deemed the result of innocent error, fraud is presumed; or if, for any cause, it be made so large and with such distinguishing marks that its boundaries cannot be readily traced, and subsequent locators cannot find them, it would be void against another location made in good faith. Just what excess will be tolerated, or what will vitiate, cannot be precisely defined; it must necessarily depend upon the circumstances of each case.[14]

In this case, easterly of the discovery-point the claim was marked about one hundred and fifty feet longer than the calls of the notice, and was considerably wider than allowed by law, while the westerly thousand feet was substantially correct in size. It appeared that the ground was so uneven that accuracy of measurement could not be expected, and the court held that the case fell within the rule stated above, especially in view of the fact that the owner of other claims had discovered and located his claim mostly on the westerly end of the claim in controversy, where the latter was correctly marked. The court said it could not be presumed that the adverse claimants were misled by the markings.

§ 130. **Shape of claim. Lode claims.** The Federal statute provides that the end lines of each claim shall be

[13] McIntosh v. Price, 121 Fed. Rep. 716, 718, 58 C. C. A. 136.

[14] Burke v. McDonald, 2 Idaho 646, 33 Pac. Rep. 49, 17 Morr. Min. Rep. 325.

parallel with each other,[15] and when at right angles with the side lines, cannot exceed six hundred feet in length.[16]

Parallelism is essential to the existence of any right of the locator, or patentee, to follow his vein outside of the vertical plane drawn through the side lines. This latter right, by the statute, is confined to such portion of the vein as lies between such planes drawn through the end lines and extended in their own direction; that is, between vertical planes.[17] The mining laws contemplate that the end lines of a lode claim shall have substantial existence in fact, and in length shall reasonably comport with the width of the claim as located.[18] It has been held, however, that if a location is made in substantial compliance with the intent of the statute — that is, where the two side lines run along the course of the vein, and two shorter end lines run across it, so that the two sets of lines are distinct and apparent — the location is not void, although the original side lines may not be parallel, or may differ from the true parallel.[19]

Side lines. It is not necessary that the side lines of a mining claim be located so as to be straight lines.[20]

§ 131. Same. Placer claims. A placer mining claim, upon unsurveyed public land, to be valid, must be located upon the ground in such shape and position as to conform, as nearly as practicable, to the United States system of public-land survey and the rectangular subdivisions of such surface.[21] And this requirement applies with equal force, whether the claims are located on surveyed or unsurveyed public lands.[22]

A gulch placer claim which cannot, by reason of its

[15] U. S. Rev. Stats., § 2320; 5 Fed. Stats. Ann., p. 18; 2 U. S. Comp. Stats. 1901, p. 1424.

[16] McElligott v. Krogh, 90 Pac. Rep. (Cal.) 823; Belligerent and Other Lode Mining Claims, 35 Land Dec. 22. And see post, ch. XXV.

[17] Iron Silver Min. Co. v. Elgin Min. & S. Co., 118 U. S. 196, bk. 30 L. ed. 98, 6 Sup. Ct. Rep. 1177, 15 Morr. Min. Rep. 641.

[18] Belligerent and Other Lode Mining Claims, 35 Land Dec. 22.

[19] Doe v. Sanger, 83 Cal. 203, 23 Pac. Rep. 365, 17 Morr. Min. Rep. 298. See more fully on this question, post, ch. XXVI.

[20] McElligott v. Krogh, 90 Pac. Rep. 823.

[21] Wood Placer Min. Co., 32 Land Dec. 198.

[22] Wood Placer Min. Co., 32 Land Dec. 363.

environment, practically be conformed to the system of public-land survey, and to the rectangular subdivision thereof, may, upon sufficient and satisfactory showing, be set off, if in shape and position approximating such system as nearly as the position will reasonably permit. In Wood Placer Mining Company Claim [23] it was held that the showing was hardly sufficient to establish the conditions necessary to bring the location within the purview of the qualifying provisions of the statute, and whilst it was ultimately urged that the creek flowing through the claim ran through a narrow cañon between steep and rugged mountains, void of mineral and placer deposits, and valueless for any purpose, much of the showing with respect to the situation and scope of the claims themselves, the depth and abruptness of the cañon and gorge, was more by way of implication than direct affirmative.

In order to bring a placer location within the purview of the qualifying provisions of the statute requiring conformation of such claims to the system of public-land survey, every feature of the conditions relied upon to entitle the locator to support the entry should be explicitly and directly set forth; it is not enough to leave it to implication. If reasonably obtainable, a report, under oath, with respect to the physical conditions should be procured from the deputy mineral surveyor who surveyed the claim.[24] In this same application, on another hearing,[25] directions were given that in all cases involving gulch placer claims a full and explicit report touching the situation and scope of the claim or claims involved, and the physical or topographical conditions surrounding them, which are relied upon to bring them within the principles applicable to gulch claims, should be required of the deputy mineral surveyor who makes the survey, to be ratified by a certificate from the surveyor-general, and that further evidence should be required as may, in any case, be deemed necessary to establish the existence of the proper and requisite conditions.

[23] 32 Land Dec. 363.
[24] Wood Placer Min. Co. Claim, 32 Land Dec. 363.
[25] 32 Land Dec. 201.

The provision of the statute requiring placer claims upon surveyed lands to conform in their exterior limits to the legal subdivisions of the public lands furnishes no authority, in the location of placer claims upon unsurveyed lands, for placing the lines of such locations upon previously patented or entered lands.[26]

[26] The case of Rialto No. 2 Placer Mining Claim, 34 Land Dec. 44, cited and distinguished.
Golden Chief "A" Placer Mining Claim, 35 Land Dec. 557.

CHAPTER XIII.

MARKING THE BOUNDARIES OF A MINING CLAIM.

§ 132. Necessity. In general.
§ 133. Same. Placer claims.
§ 134. Same. Tunnel claims.
§ 135. Time of marking.
§ 136. Mode and sufficiency of marking. Boundaries generally.
§ 137. Same. Monuments.
§ 138. Same. Stakes, posts, etc.
§ 139. Same. Conflicting corners.
§ 140. Same. Several locators.
§ 141. Same. Miners' rules and regulations.
§ 142. Same. Local statutes.
§ 143. Changing course of boundaries.
§ 144. Obliteration of markings.

§ 132. Necessity. In general. The Federal mining law expressly requires that the location be distinctly marked on the ground so that its boundaries can be readily traced.[1]

§ 133. Same. Placer claims. The Federal statute requiring the location of a mining claim to be distinctly marked on the ground has been held applicable to placer claims.[2]

[1] **U. S.** Erhardt v. Boaro, 113 U. S. 537, bk. 28 L. ed. 1116, 5 Sup. Ct. Rep. 565, 4 Morr. Min. Rep. 432; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Oregon King Min. Co. v. Brown, 119 Fed. Rep. 48, 55 C. C. A. 626, 22 Morr. Min. Rep. 414; Ledoux v. Forester, 94 Fed. Rep. 600; Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617.

Ariz. Jantzon v. Arizona Copper Co., 3 Ariz. 6, 20 Pac. Rep. 93.

Cal. Funk v. Sterrett, 59 Cal. 613; Newbill v. Thurston, 65 Cal. 419, 4 Pac. Rep. 409; Howeth v. Sullenger, 113 Cal. 547, 45 Pac. Rep. 841; Daggett v. Yreka Min. & M. Co., 149 Cal. 365, 86 Pac. Rep. 968.

Colo. Taylor v. Parenteau, 23 Colo. 368, 48 Pac. Rep. 505, 18 Morr. Min. Rep. 531.

Mont. Sanders v. Noble, 22 Mont. 110, 55 Pac. Rep. 1037, 19 Morr. Min. Rep. 650.

Nev. Southern Cross G. & S. Min. Co. v. Europa Min. Co., 15 Nev. 383, 9 Morr. Min. Rep. 513.

Utah. Wells v. Davis, 22 Utah 322, 62 Pac. Rep. 3, 21 Morr. Min. Rep. 1.

[2] Sweet v. Webber, 7 Colo. 443, 4 Pac. Rep. 752; Walton v. Wild Goose Min. & Tr. Co., 123 Fed. Rep. 209, 60 C. C. A. 155, 22 Morr. Min. Rep. 688.

A recent California case has held that when a location is made according to legal subdivisions, the location is distinctly marked on the ground, within the meaning of the statute; that in such case the boundaries can be readily traced by any one who will follow the "exterior limits" of the subdivision, and that consequently it is not necessary to further mark the boundaries.[3]

The Montana court, also, has held that separate marks of the boundaries of each twenty-acre tract contained in a one-hundred-and-sixty-acre placer claim are not necessary.[4]

§ 134. Same. Tunnel claims. The question of marking the boundaries of a tunnel claim is treated elsewhere.[5]

§ 135. Time of marking. In the absence of any statute or local rules or regulations fixing the time, the discoverer will be allowed a reasonable time in which to complete his location by correctly marking the boundaries of the same.[6] What is a reasonable time must, of necessity, depend upon all the circumstances, and is a question of fact to be determined from the circumstances of the particular case.[7] The marking of the boundaries may precede the description, or the description may precede the marking.[8] But a locator who files his notice of location, but fails to mark the boundaries of the claim, takes the risk of other persons acquiring intervening rights.[9]

[3] Kern Oil Co. v. Crawford, 143 Cal. 298, 76 Pac. Rep. 1111, overruling White v. Lee, 78 Cal. 593, 21 Pac. Rep. 363, 12 Am. St. Rep. 115, 17 Morr. Min. Rep. 209, and characterizing as dictum a statement to the contrary in Anthony v. Jillson, 83 Cal. 296, 298, 23 Pac. Rep. 419, 16 Morr. Min. Rep. 26. See also Reins v. Murray, 22 Land Dec. 409.

[4] McDonald v. Montana Wood Co., 14 Mont. 88, 35 Pac. Rep. 668, 43 Am. St. Rep. 616.

[5] See ante, ch. VIII.

[6] Erhardt v. Boaro, 113 U. S. 527, bk. 28 L. ed. 1113, 5 Sup. Ct. Rep. 560, 4 Morr. Min. Rep. 432; Gleeson v. Martin White Min. Co., 13 Nev. 442, 9 Morr. Min. Rep. 429; Union Min. & M. Co. v. Leitch, 24 Wash. 585, 64 Pac. Rep. 829, 85 Am. St. Rep. 961.

Contra: Patterson v. Tarbell, 26 Oreg. 29, 36, 37 Pac. Rep. 76.

[7] Doe v. Waterloo Min. Co., 55 Fed. Rep. 11.

[8] Erwin v. Perego, 93 Fed. Rep. 608, 611, 35 C. C. A. 482.

[9] Brockbank v. Albion Min. Co., 29 Utah 367, 81 Pac. Rep. 863.

A locator of a mining claim who has posted upon the lode a sufficient notice of his location, but has not completed the markings of the boundaries upon the ground, may, by parol, assign to others an interest in such initiated right as to authorize such other persons, as assignees of such interest, to complete the location by establishing the monuments necessary to mark the boundaries of the claim upon the ground, within a reasonable time after posting the notice.[10]

§ 136. **Mode and sufficiency of marking. Boundaries generally.** The Federal statute does not prescribe the mode or manner of marking a mining claim, what kind of marks shall be made, or upon what part of the ground they shall be placed; the only requirement being that it "must be distinctly marked on the ground so that its boundaries can be readily traced."[11] And, in the absence of any local rule or regulation or state statute on the question, the general provision of the Federal act must govern.[12]

The question as to the sufficiency of the markings depends, to some extent at least, upon the character and condition of the ground located. Any marking on the ground claimed, whether by stakes, mounds, or written notices, whereby the boundaries of the claim can be readily traced, is sufficient.[13] If the center line of a location of a lode claim lengthwise along the lode be marked by a prominent stake or monument at each end thereof, upon one or both of which is placed a written notice showing that the locator claims the length of said line upon the lode from stake to stake, and a certain specific number of feet in width on each side of said line, the location is sufficiently marked upon the ground to meet the requirements of the law.[14]

[10] Doe v. Waterloo Min. Co., 55 Fed. Rep. 11, 13.

[11] Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 261; Funk v. Sterrett, 59 Cal. 613.

[12] Howeth v. Sullenger, 113 Cal. 547, 45 Pac. Rep. 841.

[13] Oregon King Min. Co. v. Brown, 119 Fed. Rep. 48, 55 C. C. A. 626, 22 Morr. Min. Rep. 414; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

[14] North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 533, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 529.

A notice posted upon a tree at each end of a claim is not a sufficient compliance with the requirement that the location must be distinctly marked upon the ground so that its boundaries can be readily traced.[15]

A subsequent locator cannot object that a prior location of a mining claim was not sufficiently marked on the ground at the time of the location, if such prior location was sufficiently marked on the ground before such subsequent locator made any location, or acquired any rights in the premises.[16]

Placing monument on appropriated land. In marking the boundaries of a mining claim, the monuments may be placed upon patented or otherwise appropriated land of the United States, where the discovery is made upon lands subject to location, and the location-notice posted thereon in the monument on the lode. The California supreme court, in a very recent case,[17] said: "We are referred to no authority which holds that the corner-monuments of a location must be placed upon vacant or unappropriated lands subject to location, in order to constitute a valid location. The basis of the title or right to a mining claim is the discovery of the mineral-bearing vein. The posting of the location-notice and marking of the boundaries is simply to give notice that mining location by virtue of the discovery is claimed."

§ 137. Same. Monuments. A monument, of a substantial character, put at each end of the claim, with indications thereon that they mark the center line of the claim, and that the claim extends a given number of feet on each side of the center line, has been held to be sufficient compliance with the statute.[18]

The location is not rendered invalid by the fact that the locator, through mistake, or otherwise, placed some of the

[15] Holland v. Mt. Auburn G. Q. Min. Co., 53 Cal. 149, 9 Morr. Min. Rep. 497.

[16] Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 681, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

[17] McElligott v. Krogh, 90 Pac. Rep. 823.

[18] Oregon King Min. Co. v. Brown, 119 Fed. Rep. 48, 55 C. C. A. 626, 22 Morr. Min. Rep. 414.

monuments necessary to mark his boundaries upon an adjoining claim. On the contrary, in so far as the ground taken was vacant, the location, if properly made in other respects, is considered valid and sufficient.[19] But it is not a sufficient compliance with the requirements as to the marking of boundaries of a claim, that a monument of rocks, three or four feet high, was placed on the croppings of the ledge, and a notice posted thereon to the effect that the signer claimed seven hundred and fifty feet running southwesterly, and seven hundred and fifty feet running northeasterly, and three hundred feet on each side, with all its dips, spurs, and angles.[20]

§ 138. **Same. Stakes, posts, etc.** The question as to the sufficiency of the stakes and monuments to enable the location to be traced always depends, to a great extent, upon the conformation and condition of the ground located. On a comparatively barren hillside, driving stakes two by four inches, and four feet long, at each of the four corners of the claim, upon which are letters or numbers designating the corner of the claim where posted, and which stakes can readily be seen, is a sufficient compliance with the requirements of the law.[21] And placing at each corner, at the point of discovery, and upon each side line of the claim, substantial stakes four inches in diameter and four feet high, and posting upon the discovery-stake, and upon a tree about twenty feet therefrom, location-notices, in writing, containing the name of the claim, the date of the location, the names of the locators, and an attempted description of the claim, the claim being a parallelogram in shape, situated on a ridge, and while there were some trees there was nothing

[19] Doe v. Tyler, 73 Cal. 21, 14 Pac. Rep. 375. See also West Granite Mountain Min. Co. v. Granite Mountain Min. Co., 7 Mont. 356, 17 Pac. Rep. 547.

[20] Gelcich v. Moriarty, 53 Cal. 217, 9 Morr. Min. Rep. 498.

[21] Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617; Credo Min. & S. Co. v. Highland Min. & M. Co., 95 Fed. Rep. 911, 912, where posts seven inches in diameter were firmly planted in the ground, and stood not less than five feet aboveground, and were designated as being the end, centers, and corners of the claim. See also Doe v. Waterloo Min. Co., 55 Fed. Rep. 11, 12.

to seriously obstruct or to make difficult a view of the corner-stakes from the point of discovery, is sufficient.[22]

Setting a post at or near the discovery-point, and setting stakes at the four corners and at the centers of the end lines, has been held not to be sufficient, unless the topography is such that a person accustomed to tracing such lines can, after reading the description contained in the location-notice, by a reasonable and bona fide effort, trace the lines and find stakes.[23]

In one case, notices were posted by the locators, and the location-stakes were driven firmly into the ground at each of the four corners, stone monuments being placed around them and the stakes being marked as corner-stakes, the stakes and mounds, and the description in the notice, being counted as the permanent monuments by which the claim could be identified. It was urged that the corners only were established, and that no side or end lines were in any way laid out; but it was held that the marks were a sufficient compliance with the requirements of the statute; and that whether or not, from the objects claimed by the locators, the boundaries could be readily traced, was a question of fact for the trial court.[24]

Blazing a tree three hundred feet north of the southeast corner of the claim, planting stakes, one at the southeast corner, one at the southwest corner, one at the northeast corner, and posting upon the tree so blazed a notice describing the claim as beginning at the tree upon which the notice is posted, running thence to the stake at the southeast corner, giving the distance, thence running west to the stake at the southwest corner, giving the distance, thence running north a given distance to the northwest corner, thence east a given distance to the northeast corner at a stake, and thence south a given distance to the blazed tree, was held sufficient in one case.[25]

[22] Smith v. Newell, 86 Fed. Rep. 56.

[23] Ledoux v. Forester, 94 Fed. Rep. 600.

[24] Du Prat v. James, 65 Cal. 555, 4 Pac. Rep. 562, 15 Morr. Min. Rep. 341.

[25] Walsh v. Erwin, 115 Fed. Rep. 531, 532.

§ 139. Same. **Conflicting corners.** In the case of a conflict in the evidence as to which of two posts is the true corner of a mining claim, that one has priority which is so set as to include within the boundaries of the claim the discovery and improvements upon which it is based, and the official survey thereof, and sustain the validity of the official survey, and thereby prevent the party from being made the victim of a legal fraud, rather than the one which would exclude from the boundaries of the claim the discovery and the improvements upon which the claim is based, and defeat the official survey thereof, although the other party may thereby suffer a loss, the risk of which was voluntarily assumed.[26]

§ 140. Same. **Several locators.** The right to priority in a mining claim, by a prior locator, so far as marking the boundaries is concerned, is sufficiently established by evidence that one of the joint locators erected one of them alone, that the other locator erected two alone, and that both jointly erected two; one of the joint locators being dead, the other testifying that on the day of the location he wrote a notice and gave it to the deceased to post upon the monument erected by the deceased at the west-end center, that subsequently he went with the deceased on the ground, and was shown by him the monuments deceased had erected, with the notice upon one previously written by the witness and given to the deceased; that the northwestern corner-monument was peculiar, in that it was built by the side of a cliff of rocks, upon a shelf projecting therefrom; that it was the same corner which he pointed out to the surveyor as a northwest corner of the claim, and being the same corner which the surveyor testified to be the northwest corner of his survey; that the west-end center-monument, upon which he saw the notice, is the same monument pointed out to him by the deceased, and as to which the surveyor testified is the west-end center-monument in his survey; the controversy

[26] Credo Min. & S. Co. v. Highland Min. & M. Co., 95 Fed. Rep. 911, 917.

being limited to the establishment of the west-end monuments.[27]

§ 141. Same. Miners' rules and regulations. Where there is a local miners' rule or regulation requiring the boundaries of a mining claim to be marked in a particular manner, the marking must be made as required. Thus where the miners' rules require a mining claim to be "staked off," with the owner's name, giving the direction, length, width, and date, it is held that the phrase "staked off" evidently refers to marking the boundaries of the claim by stakes, or at least to the posting of stakes along the vein or its croppings so as to indicate to other prospectors the ground intended to be located, and that it is hardly possible that this phrase could mean simply the erection of a single stake, although the court did not decide exactly what sort of stakes were meant, or their number.[28]

As was well said in a recent case[29] by the United States supreme court, "Whether such location shall be made by stone posts at the four corners, or by simply wooden stakes, or how many such posts or stakes shall be placed along the sides and ends of the location, or what other matter of detail must be pursued in order to perfect a location, is left to the varying judgments of the mining districts. Such locations, such markings on the ground, are not always made by experienced surveyors. Indeed, as a rule, it has been and was to be expected that such locations and markings would be made by the miners themselves, — men inexperienced in the matter of surveying, and so in the nature of things there must frequently be disputes as to whether any particular location was sufficiently and distinctly marked on the surface of the ground. Especially is this true in localities where the ground is wooded or broken. In such localities the posts, stakes, or other particular marks

[27] Doe v. Waterloo Min. Co., 55 Fed. Rep. 11, 15.

[28] Becker v. Pugh, 9 Colo. 589, 13 Pac. Rep. 906, 15 Morr. Min. Rep. 304.

[29] Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

required by the rules and regulations of the mining district may be placed in and upon the ground, and yet, owing to the fact that it is densely wooded, or that it is very broken, such marks may not be perceived by the new locator, and his own location marked on the ground in ignorance of the existence of any prior claim."

§ 142. **Same. Local statutes.** Many of the states and territories have statutes containing provisions in respect to the location of a mining claim, other than the mere marking on the ground of the boundaries of the claim; and before a location of a mining claim, in those states in which statutes have been enacted, is perfected, all the provisions of the state statutes, as well as of the Federal statutes, must be complied with, since location, in those states, does not consist in a single act.[30]

In Colorado there must be erected a location-stake at the discovery of the claim, with a plain sign or notice thereon, containing the name of the lode, the name of the locator, and the date of the discovery.[31] And the claim must have its boundaries so marked upon the surface as to be easily traced, by means of six substantial stakes, one set at each corner of the claim, and one at middle of each side line thereof, which stakes must be of substantial character and sunk in the ground, and hewed on the two sides of the corner-stakes which are in toward the claim, and the side-stakes hewed on the sides which are in toward the claim.[32] And a locator of a mining claim in the state of Colorado cannot be relieved of the consequences of his failure to properly mark the boundaries of his claim, by the provisions of a statute of that state which provides that where any one or more of several posts required to be placed at the boundaries of the claim shall fall by right upon precipitous ground, so that the proper placing of the same is impracticable, or dangerous to life and limb, it shall be legal and valid to place

[30] Creede & C. C. Min. & M. Co. v. Uinta Tunnel M. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266.
[31] Cheesman v. Shreeve, 40 Fed. Rep. 787, 17 Morr. Min. Rep. 280.
[32] Cheesman v. Shreeve, 40 Fed. Rep. 787, 17 Morr. Min. Rep. 280.

such posts at the nearest point practical, suitably marked to designate the proper place, in a case where it appears that the correct position for the posts was not on precipitous ground, and not inaccessible, but only approachable by a circuitous route, and only inaccessible, or rather unapproachable, by a direct line of survey and measurement from the other end of the claim by reason of the intervening of the mountain crest.[33]

In Oregon, a statute requires the locator of a lode claim to establish the center end posts or monuments of the claim in a particular manner;[34] and this statute has been held not to be in conflict with the Federal mining statute referred to in the first section of this chapter, since, as the court said, "one of the fundamental requisites is that the claim shall be distinctly marked on the ground, but how, the (Federal) statute does not attempt to define," the manner of marking being left to the regulation of the state or mining district wherein the mining claim is located.[35] It necessarily follows that the locator, in order to make a valid location, must comply with this statute.[36]

In Montana, a statute[37] requires the locator of a mining claim to define the boundaries of his claim by marking a tree or rock in place, or by setting a post or stone at each corner or angle of the claim.[38]

§ 143. Changing course of boundaries. The original locator of a mining claim, or his successors in interest, may change the course of the boundaries of the original location, if such change is made before the initiation of other rights on the ground sought to be covered by such change.[39] The law permits a change of boundary lines of mining claims, when amended certificates of location are filed. If prior or

[33] Croesus Min., M. & S. Co. v. Colorado Land & M. Co., 19 Fed. Rep. 78.

[34] Oreg. Stats., §§ 3975, 3976, 3977.

[35] Wright v. Lyons, 45 Oreg. 167, 77 Pac. Rep. 81.

[36] Wright v. Lyons, 45 Oreg. 167, 77 Pac. Rep. 81.

[37] Mont. Pol. Code, § 3611.

[38] Walker v. Pennington, 27 Mont. 369, 71 Pac. Rep. 156.

[39] Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 389, 395.

superior rights are infringed by such change, such infringement and consequent injury of the prior claim should be presented to the land department, by an adverse claim, when patent is applied for; a failure so to present it is a waiver of the right, and of the injury done by the infringement.[40]

The locator cannot change the lines of his claim so as to embrace other ground, where the change will interfere with the rights which have accrued to others in respect to some part of the territory covered by the location as thus changed.[41]

§ 144. **Obliteration of markings.** When the location is so marked that its boundaries can be readily traced, the locator's right of possession becomes fully fixed, and cannot be divested by the removal or obliteration of the stakes, monuments, or notices, without the act or fault of the locator, if he performs the other acts required by law.[42] And this rule applies both to locators and to their successors in interest.[43]

But, in a recent California case[44] the only evidence introduced for the purpose of establishing the marking of boundaries consisted exclusively of certified copies of the notices of location. These notices of location, as the court observed in that case, had no law behind them to give them any legal effect, and that court declared that they were not competent evidence to prove even that they had been posted on the

[40] Seymour v. Fisher, 16 Colo. 188, 27 Pac. Rep. 240.

[41] Croesus Min., M. & S. Co. v. Colorado Land & M. Co., 19 Fed. Rep. 78. See also Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120.

[42] Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 13 L. ed. 72, 18 Sup. Ct. Rep. 895, 17 Morr. Min. Rep. 370; Walsh v. Erwin, 115 Fed. Rep. 531; Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 389; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617; Smith v. Newell, 86 Fed. Rep. 56; Treasury Tunnel M. & R. Co. v. Boss, 32 Colo. 27, 74 Pac. Rep. 888.

[43] Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 389, 392.

[44] Daggett v. Yreka Min. & M. Co., 149 Cal. 365, 86 Pac. Rep. 968.

ground, and that much less were they competent to prove the actual erection of the monuments for which they called, and which the law imperatively demands. The court in that case, speaking through Mr. Chief Justice Beatty, said that the only competent evidence in the marking of boundaries is that of witnesses who saw the monuments placed, or who saw them standing after being placed. The plaintiffs in that case contended that in the case of old claims which have been worked for years, and upon which no sufficient boundary-marks can be found, proof of original marking should be dispensed with, and a presumption indulged that they must have been properly defined by visible monuments which have been removed, or destroyed by fraud or the action of the elements. The court, in refusing to recognize this contention, said that it was without any authority to sustain it, and contrary to the policy of the mining law as expounded in scores of decisions of the state and Federal courts. The court said: "It has been held over and over again under the old district mining laws, and under the different acts of Congress, that the policy of requiring a clear definition of the boundaries of mining claims by visible monuments on the ground was to enable subsequent claimants to locate with safety upon the residue by preventing the swinging and floating of the earlier locations. To subserve this policy, and as a matter of simple justice, the locators of mining claims are required, not only to mark their location at the time it is made, but to use reasonable diligence in preserving and restoring their boundary-monuments as occasion may require. If they and their successors in interest neglect this precaution for a long series of years, as in this case, they expose themselves to the hazards incurred by these plaintiffs, of losing, by the death or absence of the original locators and other witnesses, the necessary means of proving the validity of the original location by the only competent evidence of the essential requisites of such locations. The law puts locators of mining claims under no compulsion to procure patents for their claims within any limited period. They are allowed

to hold them and work them without paying the government price of the land, or having their boundaries fixed by government surveyors, and by a public and authentic record, as long as suits their convenience, but in the mean time they must do a certain amount of work upon the claims every year. The necessity of doing this work involves the opportunity of performing annually the easy and obvious duty of inspecting and preserving their boundary-monuments, and there is no necessity, in order to promote the just policy of the mining law or any feature of it for indulging the presumption that claims have been sufficiently marked merely because they have been known as such for a number of years."

CHAPTER XIV.

NOTICE OF LOCATION.

§ 145. Posting the notice. Generally.
§ 146. Same. Miners' rules and regulations.
§ 147. Same. State statutes.
§ 148. Contents and sufficiency of notice. Generally.
§ 149. Same. Reference to another mining claim.
§ 150. Same. Adopting monuments of previous location.
§ 151. Same. Course of lines controlled by the stakes.
§ 152. Same. Question of law or of fact.
§ 153. Location-notice liberally construed.
§ 154. Amendment of notice.

§ 145. Posting the notice. Generally. The mining laws of the United States do not require any written notice to be posted upon the location of a mining claim when it is made; and in the absence of any local rule or regulation or state law requiring notice to be posted at any particular place upon the ground, a location, the boundaries of which are properly marked, is valid without the posting of a notice.[1]

§ 146. Same. Miners' rules and regulations. Where the miners' rules in force in the mining district provide for the posting of a notice of location on the claim, as one of the essential steps to a valid location, the requirement must be complied with.[2]

In one case[3] the notice was placed on the claim in this way: It was written on one side of a sheet of paper, which

[1] Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617; Erwin v. Perego, 93 Fed. Rep. 608, 35 C. C. A. 482; Walton v. Wild Goose Min. & Tr. Co., 123 Fed. Rep. 209, 60 C. C. A. 155, 22 Morr. Min. Rep. 688; Daggett v. Yreka Min. & M. Co., 149 Cal. 361, 86 Pac. Rep. 968.

[2] **U. S.** Gird v. California Oil Co., 60 Fed. Rep. 531, 18 Morr. Min. Rep. 45.

Ariz. Rush v. French, 1 Ariz. 99, 25 Pac. Rep. 816.

Cal. Carter v. Bacigalupi, 83 Cal. 187, 23 Pac. Rep. 361; Donahue v. Meister, 88 Cal. 121, 25 Pac. Rep. 1096, 22 Am. St. Rep. 283.

[3] Donahue v. Meister, 88 Cal. 121, 25 Pac. Rep. 1096, 22 Am. St. Rep. 283.

was folded with the writing inside, and placed on a mound of rock three feet high, and upon the notice was placed two flat rocks, so that about three fourths of an inch of the paper was exposed to view, the rest of the paper being overlaid by the two stones which covered it. For this reason the trial court held that the notice was not conspicuously posted, as was required by a local custom, and that the entire location was void. It was not found that the notice was thus placed for the purpose of concealing it, but it was found that the location was made in good faith, and that in thus posting the notice the locator intended merely to protect it from the weather, having made prior locations in the same manner. It was further found that "other devices were resorted to by miners to protect the notices from the weather, such as covering by glass or folding it in a box, and placing the box in a conspicuous place."

In holding the action of the trial court to be error, it was said: "An artificial mound of rocks on the line of a lode is a conspicuous object, which would naturally attract the attention of one seeking information as to a former location of the lode, and the slightest examination of the mound would result in the discovery of the written notice."

A mining custom requiring the posting of a notice in a particular way should not, perhaps, be wholly disregarded; yet the courts hold[4] that such a custom, especially when invoked years after all other acts of location have been done, should receive a liberal and not a strict construction.[5]

§ 147. Same. State statutes. In most of the mining states are to be found statutes supplemental to the Federal statutes, adopting miners' rules requiring notices of location to be posted on the claim. These statutes, or at least most of them, require two notices: a preliminary notice and a

[4] Donahue v. Meister, 88 Cal. 121, 25 Pac. Rep. 1096, 22 Am. St. Rep. 283.

[5] Donahue v. Meister, 88 Cal. 121, 25 Pac. Rep. 1096, 22 Am. St. Rep. 283; Carter v. Bacigalupi, 83 Cal. 187, 23 Pac. Rep. 361; Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617.

permanent notice. A preliminary notice, which is merely a sign indicating an intention to locate and claim the ground as a mining claim, must follow the local statutes. The permanent notice, or location-certificate, a copy of which must be recorded, must also conform to the requirements of the local and Federal statute.[6] Where the location of a mining claim was invalid because the discovery-work was done within the lines of a claim already patented, on a subsequent valid discovery within the limits of the new claim it is not necessary that a new notice of location be posted, where all the other requirements had been complied with by the locator in his first claim to the location.[7]

The Nevada statute makes it the duty of the locator, after he has made a discovery, to place his location-notice at the point of discovery. Nevertheless it is held that proof of posting a notice of location at a designated point, containing a recital therein that a discovery had there been made, is not prima facie evidence of the discovery, for the reason, if for no other reason, that the statute does not require the making of such a declaration in the notice. Proof, however, that a notice was posted at the point in question establishes that at that point the locator claims a discovery.[8]

§ 148. Contents and sufficiency of notice. Generally. In respect to the contents of the notice, irrespective of any local rule or regulation or state statute on the subject, no ironclad rule can be stated, further, perhaps, than to say that the notice should be such as to inform one reading it that the ground upon which it is posted is claimed by another person.[9] And it has been held that where the notice of location gives the length and breadth of the claim from the discovery-

[6] Cheesman v. Shreeve, 40 Fed. Rep. 787, 17 Morr. Min. Rep. 260; Erhardt v. Boaro, 113 U. S. 527, bk. 28 L. ed. 1113, 5 Sup. Ct. Rep. 560; 15 Morr. Min. Rep. 417, 472 (Colorado statute); Pollard v. Shively, 5 Colo. 309, 2 Morr. Min. Rep. 229.

[7] Treasury Tunnel, M. & Reduc. Co. v. Boss, 32 Colo. 27, 74 Pac. Rep. 888; McMillen v. Ferrum Min. Co., 32 Colo. 38, 74 Pac. Rep. 461.

[8] Fox v. Myers (Nev., 1906), 86 Pac. Rep. 793.

[9] Bennett v. Harkrader, 158 U. S. 441, bk. 39 L. ed. 1046, 15 Sup. Ct. Rep. 863, 18 Morr. Min. Rep. 224.

monument, and three corners are properly marked, and the side lines and both end lines are also properly marked, the statute is sufficiently complied with, since there ought to be no difficulty in tracing the entire boundaries, under ordinary circumstances.[10] Thus a notice of location as follows: "We, the undersigned, claim by right of discovery this ledge, lode, or deposit described as follows: Fifteen hundred feet in a northwesterly direction from this notice, and three hundred feet on each side of this vein," dated and signed by the locators, substantially complies with the requirements of the Wyoming statute.[11]

A written notice, posted on a stake at the point of discovery of a lode or vein, designated by the locators as the "Hawk Lode," and declaring that they claim fifteen hundred feet on the "lode, vein, or deposit," thus informs all persons subsequently seeking to excavate and open the lode or vein that the locators claim the whole extent along its course, which the law permits them to take. It is perhaps indeed indefinite in not stating the number of feet claimed on each side of the discovery-point, and must therefore be limited to an equal number on each side; that is, seven hundred and fifty feet on the course of the lode or vein in each direction from that point. To that extent, however, as a notice of discovery and original location, it is sufficient.[12]

Reference to mountain. In one case, where the location-notice described the claim by metes and bounds, and contained a reference to stakes set in the ground, and added that the claim lay about one mile in a southeasterly direction from a certain mountain named, it was urged that the defect in the notice was, it began at no particular portion of the mountain as the point of beginning; but it was held that such a defect was not necessarily fatal, in the light of the information contained in the affidavits; that although not advised of the shape or dimensions of the mountain, the

[10] Warnock v. DeWitt, 11 Utah 324, 40 Pac. Rep. 205.

[11] Wyo. Rev. Stats., § 2546; Columbia Copper Min. Co. v. Duchess Min., M. & S. Co., 13 Wyo. 244, 79 Pac. Rep. 385.

[12] Erhardt v. Boaro, 113 U. S. 527, bk. 28 L. ed. 1113, 5 Sup. Ct. Rep. 560, 15 Morr. Min. Rep. 447, 472.

court must, in the absence of evidence to the contrary, assume that the mountain was a recognized landmark.[13]

Priority of marking the boundaries and posting notices of location, as required by law, before a notice is recorded, determines the priority as to possession, in the case of conflicting locations, and the location as to which these acts were prior will prevail over another location, although the notice of the latter location was recorded prior to the marking of the boundaries and the posting of the notice of the former location.[14]

§ 149. Same. Reference to another mining claim. A reference, in a notice of location, properly recorded, to a known mining claim is a sufficient compliance with the law requiring a reference to be made to some natural object or permanent monument.[15] Of course the statute means, when such reference can be made. Mining lode claims are frequently found where there are no permanent monuments or natural objects, other than rocks or neighboring hills. Stakes driven into the ground are, in such case, the most certain means of identification; and when, in addition to such stakes, the premises are described by metes and bounds, and the location of the lode is also indicated by stating its distance in a certain direction from another mine, — probably the best known and most easily defined object in the vicinity, — the sufficiency of description is established.[16]

With just how much accuracy the description of a mining claim, in reference to a natural object or permanent monument, must be stated in the notice of location, is not set forth in the statute; and where the location was evidently

[13] Vogel v. Warsing (C. C. A.), 146 Fed. Rep. 949.

[14] Gregory v. Pershbaker, 73 Cal. 109, 14 Pac. Rep. 401, 15 Morr. Min. Rep. 602.

[15] Kinney v. Fleming, 6 Ariz. 263, 56 Pac. Rep. 723, 20 Morr. Min. Rep. 13; Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617.

[16] Hammer v. Garfield Min. & M. Co., 130 U. S. 291, bk. 32 L. ed. 964, 9 Sup. Ct. Rep. 548, 16 Morr. Min. Rep. 125, where the court further held that the mine referred to would be presumed to be a well-known natural object or permanent object until the contrary appeared.

made in good faith, the courts are not disposed to hold the locator to a very strict compliance with the law in respect to his location-notice. If, by any reasonable construction, in view of the surrounding circumstances, the language employed in the description will impart notice to subsequent locators, it is sufficient. Prospectors, as a rule, make no pretensions to scholarship or to the art of composition, are neither surveyors nor lawyers, and if, in their notice of location, technical accuracy of expression were an absolute requirement, the object of the law, which doubtless is the encouragement and benefit of the miners, would in many cases be frustrated, and injustice would result, by the disturbing of possession after much hard labor performed and money in good faith expended; therefore mere imperfections in the notice of location will not render it void.[17] In the case last cited there were two notices of location, and while the notices were not artistically drawn, each one, nevertheless, showed a discovery made upon a vein or deposit bearing precious metals; the amount of ground claimed; the length of the claim, giving the distance in opposite directions from the discovery; that the claim was staked at both ends and at the corners, in a lawful way; and referred to another claim as the one nearest to it. Each notice also contained the name of the claim, the signature of the locator, the date of location and of record, and the county and mining district where located. Then there was proof to show that the descriptions and markings of the boundaries as indicated in each notice were true; that a stake was erected and notice posted at each discovery, and that a stake three or four inches in diameter and four to four and a half feet high was marked and put up at each corner, except at the northeast corner of the Medway, where a stump was marked as the corner; that the stakes were driven into the ground at the respective corners, and numbered as indicated in the notices; that they were reset from time to time and kept up; and that the surveys for patent were made covering the ground practically as originally

[17] Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, 80 Pac. Rep. 736, 738.

located and staked. As was observed by the court, these notices, where the ground was actually marked as shown by the proof therein, although in some particulars indefinite and subject to criticism, were not calculated to mislead the public. Any prospector who appeared and read the notices could readily identify the ground embraced within the description. Such a notice was a sufficient compliance with the statute, and when it substantially complied with the statute it was sufficient for record.

A mining location upon the ground, and in the certificate thereof, is made sufficiently definite by reference to an established corner of another claim, and by a described substantial stake-monument as the initial point, and by placing at each of the other corners, and near the center of each end line, good and substantial stakes, so that, as marked thereby, the boundaries of the claim can be readily found upon the ground.[18]

The notice need not necessarily refer to natural objects or permanent monuments; it is only the record of the notice that is required to have such a reference.[19]

§ 150. **Same. Adopting monuments of previous location.** In the case of relocation of an abandoned or forfeited claim, the relocator may, in his notice, refer to the boundary-monuments of the previous location, and adopt such monuments by repairing or reconstructing them, when they correspond with the calls in his notice.[20]

§ 151. **Same. Course of lines controlled by the stakes.** A mistake, in a location-notice, in direction does not invalidate the location claim. Positive exactness in such matters should never be required. The word "northerly," for instance, may mean any meridian line or course between due north and northwest, and is made definite and certain by the posting of the stakes or the building of the monu-

[18] McIntosh v. Price, 121 Fed. Rep. 716, 58 C. C. A. 136.

[19] Poujade v. Ryan, 21 Nev. 149, 33 Pac. Rep. 659; Brady v. Husby, 21 Nev. 453, 33 Pac. Rep. 801.

[20] Brockbank v. Albion Min. Co., 29 Utah 367, 81 Pac. Rep. 863.

ments at the corners of the location, or along the lines thereof, for it is the marking of the location, by posts and monuments, that determines the particular ground located.[21]

§ 152. **Same. Question of law or of fact.** Whether or not a miner's notice of location contains a sufficient description is one of fact and not of law.[22] So, too, what are natural objects and permanent monuments, are often questions of fact.[23]

§ 153. **Location-notice liberally construed.** Where the local rules and regulations of miners, or the state laws, require a notice to be posted upon the ground at the time the location is made, the courts are naturally inclined to be exceedingly liberal in their construction.[24]

§ 154. **Amendment of notice.** A mining location may be so amended by any express reservation thereof in the amendment as not to forfeit any rights acquired by the original location; but rights inconsistent with the amendment cannot be so reserved, nor can such amendment create additional rights, conflicting with those acquired prior to such amendment.[25]

[21] Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617.

[22] Ellers v. Boatman, 111 U. S. 356, bk. 28 L. ed. 454, 4 Sup. Ct. Rep. 432, 15 Morr. Min. Rep. 471. See also Bramlett v. Flick, 23 Mont. 95, 57 Pac. Rep. 869, 20 Morr. Min. Rep. 103; Farmington Gold Min. Co. v. Rhymney Gold & C. Co., 20 Utah 363, 58 Pac. Rep. 832, 77 Am. St. Rep. 913.

Compare: Jantzon v. Arizona Copper Co., 3 Ariz. 6, 20 Pac. Rep. 93; Taylor v. Middleton, 67 Cal. 656, 8 Pac. Rep. 594, 15 Morr. Min. Rep. 284.

[23] Vogel v. Warsing (C. C. A.), 146 Fed. Rep. 919, and cases cited.

[24] Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617. The court says: "Such notices are often drawn by practical miners, unaccustomed to legal forms and technical phraseology; hence the language used in the notices is often subject to more or less criticism by counsel learned in the law." See Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 389; Walton v. Wild Goose Min. & Tr. Co., 123 Fed. Rep. 209, 60 C. C. A. 155, 22 Morr. Min. Rep. 688; McCann v. McMillan, 129 Cal. 350, 62 Pac. Rep. 31, 21 Morr. Min. Rep. 6.

[25] Bunker Hill & S. M. & C. Co. v. Empire State-Idaho M. & D. Co., 114 Fed. Rep. 268. See also Empire State-Idaho Min. & D. Co. v. Bunker Hill & S. Min. & C. Co., 131 Fed. Rep. 591, 66 C. C. A. 99.

The object or purpose of amending or changing the location of a claim need not be stated in the certificate thereof; it is sufficient if the certificate of the amended location contain the general statement that it is made to cure errors or defects, and will be effectual for all purposes enumerated in a statute providing therefor.[26]

When a mining location has been amended, and all necessary steps taken under the law, such amended location becomes the completed location of the discoverer, and preserves to him, or his successors in interest, all rights initiated by the original location, and in the added ground as well, if not in conflict with rights acquired in such added ground prior to the taking of the steps necessary to perfect such amended location, and any person entering thereon, subsequent to such completion, can acquire no rights therein, has not been injured thereby, and has no cause for complaint by reason thereof.[27]

The relocation of a valid subsisting mining claim, by the owner, for the avowed purpose of correcting defects, is not an abandonment of the prior location. The rights of the locator relate back to the inception of the right; that is, to the date of the first location.[28]

The boundary lines of a mining claim cannot be changed by an amended location to interfere with or defeat the rights of another location, made previous to such changes of lines.[29]

[26] Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 389.
[27] Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 389.
[28] Fuller v. Harris, 29 Fed. Rep. 814. See also Lebanon Min. Co. v. Consolidated Rep. Min. Co., 6 Colo. 371.
[29] Croesus Min. & Smelt. Co. v. Colorado Land & Min. Co., 19 Fed. Rep. 78.

CHAPTER XV.

THE CERTIFICATE OF LOCATION, RECORDATION, ETC.

§ 155. In general.
§ 156. Distinction between location and recording.
§ 157. Local rules and regulations, and statutes.
§ 158. Time of making record.
§ 159. Same. Effect of failure to record within time.
§ 160. Verification.
§ 161. Same. Verification upon information and belief.
§ 162. Contents of the record.
§ 163. Same. Natural or permanent monuments.
§ 164. Same. State statutes.
§ 165. Same. Amendments.
§ 166. Effect of record as evidence.

§ 155. In general. The act of Congress does not, in express terms, require the registration of a notice,[1] but recognizes the power of the miners to require the registration, by providing that registration or recordation of mining claims shall contain a certain description, etc.

The object of recording mining claims is to give notice to others desiring to make locations. The acts of Congress do not require a record. If there are no local rules in a mining district attaching the penalty of forfeiture to the failure to record locations, and recording is not made a necessary act of location, then a failure to record will not invalidate a location.[2]

§ 156. Distinction between location and recording. The language of the act of Congress authorizing miners to make regulations governing the location and manner of recording mining claims, implies that the act of location is distinct

[1] Gregory v. Pershbaker, 73 Cal. 109, 14 Pac. Rep. 401, 15 Morr. Min. Rep. 602; Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Daggett v. Yreka Min. & M. Co., 119 Cal. 357, 361, 86 Pac. Rep. 698.

[2] Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; County of Kern v. Lee, 129 Cal. 361, 61 Pac. Rep. 1124.

and different from the act of recording, except in districts where the regulations of the miners make the recording an act of location, or one of the acts necessary to constitute a location.[3]

§ 157. Local rules and regulations, and statutes. While, as stated in the previous section, and as will be seen by reference thereto,[4] the statute itself does not, in terms, require a record of the location, yet it does authorize the miners to make district rules and regulations providing for such record; and where there is in force, at the time, such a local rule or regulation, it must be complied with.[5]

Local statutes. In several of the mining states there are statutes governing the recording of the location. In these states the paper required to be recorded is variously called notice of location,[6] certificate of location,[7] and declaratory statement.[8] And, of course, in these states the statute should be complied with.[9]

In Oregon, it has been held that a statute[10] that requires the locator of a lode claim to attach to the copy of notice of location, filed with the clerk of the county wherein the claim is situated, an affidavit showing that the work required to be done by another statute has been performed, as a condition precedent to the establishing of a valid claim, is not in conflict with the provisions of the Federal statute requiring the locator distinctly to mark the claim on the ground so that its boundaries may be readily traced.[11] As the court,

[3] Jupiter Min. Co. v. Bodle Consol. Min. Co., 11 Fed. Rep. 666, 679, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

[4] U. S. Rev. Stats., § 2324; 5 Fed. Stats. Ann., p. 19; 2 U. S. Comp. Stats. 1901, p. 1426. See Gird v. California Oil Co., 60 Fed. Rep. 531, 534, 18 Morr. Min. Rep. 45.

[5] North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 535, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 524; Smith v. Newell, 86 Fed. Rep. 56. See also Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 673, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411.

[6] **As in Arizona and Oregon.** See Wright v. Lyons, 45 Oreg. 167, 77 Pac. Rep. 81.

[7] **As in Colorado.** See Faxon v. Barnard, 4 Fed. Rep. 702, 2 McC. C. C. 44, 9 Morr. Min. Rep. 515.

[8] **As in Montana.** See post, pt. II.

[9] McMillen v. Ferrum Min. Co., 32 Colo. 38, 74 Pac. Rep. 461.

[10] B. & C. Comp., § 3976.

[11] Wright v. Lyons, 45 Oreg. 167, 77 Pac. Rep. 81.

in so holding, said, "One of the fundamental requisites is that the claim shall be distinctly marked on the ground, but how, the (Federal) statute does not attempt to define, the manner of the marking being left to the regulations of the state or the mining district in which the mine is located; and all reasonable regulations looking to that end are certainly within the compass of the Federal law. So with reference to the recording of the claim. The record must at least substantially accord with the United States statutory requirements, but there is here left scope for state and district regulations, and a reasonable amount of development-work may be required, so as to expose the lode, render certain the discovery, and indicate the good faith of the locator; and, as evidence of such compliance, proof may be required that the work has been done. Such regulations are not deemed to be repugnant to the Federal statute, and are therefore valid, and binding upon the locator if he would secure a good location." It necessarily follows that the locator, in order to make a valid location, must comply with this statute; and his omission to attach the affidavit of proof of work required to be done by statute, invalidates the location.

§ 158. **Where record of a mining location is required** to be made, the depositing with or delivery to the proper officer of the notice or other paper required to be recorded, and payment of the lawful fees provided therefor, with request to file and record the same, fulfils the requirements of the law or regulation,[12] and the failure of the officer to perform his duty in noting the filing, or entering the paper upon the record, does not defeat the rights of the locator in respect to the record. Any irregularity in regard to those matters is cured by the issue of the final receipt and certificate of purchase.[13]

The laws of the United States do not prescribe any time in which excavations shall be made upon the claim prior to

[12] Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. Rep. 557, 562, 9 C. C. A. 613.

[13] Oregon King Min. Co. v. Brown, 119 Fed. Rep. 48, 57, 55 C. C. A. 626, 32 Morr. Min. Rep. 411, reversing 110 Fed. Rep. 728.

the recordation of the location-notice or the certificate of location. In fact, the Federal laws do not require, in express terms, that the notice or certificate be recorded at all, hence the time, which shall elapse between the date of discovery and the date upon which the certificate or notice shall be recorded, is left wholly to the state laws and the local rules and regulations of the miners. And the Colorado statute, which requires the locator to do certain work upon his claim, within sixty days after discovery, and requires him, within three months after the day of discovery, to record his certificate of location, has been held by the supreme court of the United States to be a reasonable length of time.[14]

In Wyoming the certificate of location must be filed within sixty days after discovery.[15]

§ 159. Same. Effect of failure to record within time. Although a state statute may provide for recording a location within a fixed time, yet if it provides no penalty for failure so to record the location, the location may be recorded after the expiration of the time fixed and the rights of the locator preserved, provided no intervening rights have accrued.[16] And it is held that the fact that a certificate of location was not filed within sixty days after discovery, as required in Wyoming, will not defeat an action for trespass and to quiet title to the claim, where it appears that the defendant acquired no rights between the expiration of sixty days and the date when the certificate was filed.[17]

[14] Erhardt v. Boaro, 113 U. S. 527, bk. 28 L. ed. 1113, 5 Sup. Ct. Rep. 560, 15 Morr. Min. Rep. 447, 472.

[15] Columbia Copper Min. Co. v. Duchess Min., M. & S. Co., 13 Wyo. 244, 79 Pac. Rep. 385. In this case, where the date of discovery was stated as July 17th, and the certificate being filed September 16th, sixty-one days after discovery, it was held that, as September 15th was Sunday, it would be excluded in computing the time for filing, under Wyoming Rev. Stats. 1899, § 3423.

As to exclusion of Sunday in computation of the time within which an act is to be done, see **Kerr's Cyc. Civ. Code Cal.**, p. 9, pars. 10-14; **Kerr's Cyc. Code Civ. Proc. Cal.**, p. 12, also § 13, note pars. 1, 2.

[16] Preston v. Hunter, 67 Fed. Rep. 996, 15 C. C. A. 148.

[17] Columbia Copper Min. Co. v. Duchess Min., M. & S. Co., 13 Wyo. 241, 79 Pac. Rep. 385.

Under the Colorado statute, requiring certificates of location of mining claims to be recorded within three months after the discovery, a failure to make the record within the time designated will not forfeit the right of the locator in the location of his discovery, if he make the record before any adverse rights accrue.[18]

Construing the Nevada statute in the matter of recording a notice or certificate of location,[19] the United States circuit court, through Mr. Justice Hawley, decided, in a very recent case, that the requirements of the statute, to the effect that the locator should record his notice or certificate of location, is directory, and not mandatory.[20] This statute says: "Within ninety days of the date of posting the location-notice upon the claim the locator shall record his claim with the mining district recorder and the county recorder of the mining district or county in which such claim is situated by a location-certificate which must contain"— setting out what must be set forth in the certificate, and continuing, "Any record of the location of a lode mining claim which shall not contain all of the requirements named in this section shall be void." This eminent jurist saying, "The statute under consideration, while designed to give constructive notice to prospectors of ground claimed by the locators, was also intended for the benefit of the miners making location upon the public domain. It gives to the locator ninety days to record his certificate of location after posting his notice of location, tells him what it shall contain, and declares that, if it does not contain what is required, the 'record' shall be void. It does not say that, if the record is not made, his rights to the claim shall be forfeited. . . . but if he fails to record his claim, it was not intended that he should be deprived of all his rights to the mining-ground, provided he had substantially complied with

[18] Faxon v. Barnard, 4 Fed. Rep. 702, 2 McC. C. C. 44, 9 Morr. Min. Rep. 515; Craig v. Thompson, 10 Colo. 517, 16 Pac. Rep. 24.

[19] Comp. Laws Nev., p. 45, § 210.

[20] Zerres v. Vanina, 134 Fed. Rep. 610, 618-620. In this case, the judgment of the circuit court was affirmed by the circuit court of appeals, January 7, 1907. The affirmance was upon another point in the case, the matter of recordation not being discussed: Zerres v. Vanina, 150 Fed. Rep. 564.

all the other requirements of the mining laws." The court's understanding of what was intended by the legislature was, that unless the statute in plain language set forth that the locator should forfeit his claim unless his certificate be recorded, that there could be no forfeiture; and, quoting from Last Chance Min. Co. v. Bunker Hill S. Min. Co.,[21] said, "that the failure of the locator of the Bunker Hill claim to record his notice of location within the time prescribed by the Idaho statute did not work forfeiture of the claim, there being no such penalty fixed by the statute." Nor is it necessary, under the Nevada statute, to file for record an amended certificate of location in cases where the original notice is clear and definite, and the boundaries of the claim are so marked and monumented that the boundaries thereof can be readily traced and determined upon the ground; but he may within the ninety days file such original notice for record as his certificate of location.[22]

In Idaho, the statute requires location-notices to be recorded within ninety days after the location is made; but a failure so to record the notice does not render the location void, so that a subsequent locator, who has actual notice of the prior location, — has seen and read the notice upon the premises where posted, and has seen the locator upon the premises developing the mine, — cannot by such subsequent location acquire any interest in the ground embraced within any such prior claim upon the surface, or in any extralateral right pertaining thereto.[23]

§ 160. **Verification.** The Federal mining laws are silent as to the verification of the notice or certificate of the location to be filed;[24] but in some of the mining states verification is made necessary by express statute.

In Montana the verification of the location-certificate is required to be made by the locator of the claim. The

[21] C. C. A.; 131 Fed. Rep. 579.

[22] Porter v. Tonopah North Star T. & D., 133 Fed. Rep. 756, 763.

[23] Last Chance Min. Co. v. Bunker Hill & S. Min. & C. Co., 131 Fed. Rep. 579, 66 C. C. A. 299; Idaho C. C. § 2559, Stats. 1899, p. 238.

[24] Hoyt v. Russell, 117 U. S. 401, bk. 29 L. ed. 914, 6 Sup. Ct. Rep. 881.

object of this requirement is to prevent fraud, by subjecting the locator to the penalties of perjury, if he swears falsely or corruptly. If the verification is, in form, in accordance with the statute, it is, prima facie, sufficient, and the facts stated in it are, prima facie, true. Of course its effectiveness can be avoided by proof that the facts so verified did not exist, or were untrue. But where no evidence is offered, in an action to determine adverse claims, to challenge the truth of the verification, and it is not claimed that any of the facts therein stated did not exist or were not true, the verification must be taken as true, and, so far as the adverse location is concerned, it is immaterial that the verification was not made upon the personal knowledge of the affiant, but upon information and belief.[25]

§ 161. Same. Verification upon information and belief. The Montana statute[26] providing that the declaratory statement for a mining claim must be verified by the oath of the locator does not require such verification to be upon the personal knowledge of the locator, but it may be verified upon information only.[27] As was said in another case,[28] in construing a similar provision in the territorial statute, "It is not usual to require such strictness, unless the statute prescribing the oath expressly requires it. The object of recording the declaratory statement is to give the public notice that a location has been made, and the object of requiring an oath was to prevent fraud, by subjecting the locator to the penalties of perjury if he swore falsely and corruptly. If the affiant in such cases swears falsely and corruptly, he will be as much amenable to the penalties of the law pronounced against perjury as if he had made the oath upon his own alleged personal knowledge; and the mere fact that the oath is absolute in form, when in fact it was made upon information and belief, does not invalidate it."

[25] Mares v. Dillon, 30 Mont. 117, 75 Pac. Rep. 963.
[26] Mont. Pol. Code, § 3612.
[27] Mares v. Dillon, 30 Mont. 117, 75 Pac. Rep. 963.
[28] Wenner v. McNulty, 7 Mont. 30, 14 Pac. Rep. 643.

§ 162. Contents of the record. Although, by the terms of the Federal mining laws, the record of a location is not required, yet, if made, it must contain the name or names of the locator or locators, the date of the location, and such description of the claim or claims located by reference to some natural or permanent monument as will identify the claim.[29] It is not necessary that this record of the claim shall be a literal and exact copy of the posted notice.[30]

§ 163. Same. Natural or permanent monuments. The natural or permanent monument need not be on the ground located, although it may be; and the natural object may consist of any fixed natural object; the permanent object may consist of a permanent post or stake firmly planted in the ground, or of a shaft sunk in the ground.[31]

§ 164. Same. State statutes. In many, indeed if not in most, of the mining states, there are statutes supplementing the Federal statute as to what the record must contain, as will be now shown, and these statutes should be complied with, in order to secure a completed location. But, although the statute or local rule requires the recording of a location-notice within a given time, a failure in which respect voids the location, the giving of inexact courses or boundary lines, as southeasterly, when in fact the line varied from the southeast course in the recorded notice, the giving of such inexact courses will not void the location, if there is sufficient in such recorded notice, taken in connection with the markings on the ground, to enable a person of ordinary intelligence to distinguish the premises located from the public unappropriated mineral land.[32]

In Colorado, a certificate of the location must be filed for record in the county in which the lode or vein is situated,

[29] North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 533, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 524; Jupiter Min. Co. v. Consolidated Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Allen v. Dunlap, 24 Oreg. 229, 33 Pac. Rep. 675.

[30] Gird v. California Oil Co., 60 Fed. Rep. 531, 18 Morr. Min. Rep. 45.

[31] North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 533, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 524.

[32] Smith v. Newell, 86 Fed. Rep. 56.

containing the name of the lode, the names of the locators, the date of location, the number of linear feet in length claimed on each side of the center of the discovery-shaft, the general course of the lode, and such a description of the claim, by reference to some natural object or permanent monument, as will identify it with reasonable certainty.[33]

It has never been the policy to void mining locations for defects in such records, but rather to give the locator an opportunity to correct his record whenever defects may be found in it. Such seems to be the meaning of section twenty-five of the General Statutes of the state of Colorado, and section sixteen of the same act, which declares that defective certificates shall be void, must be read in connection therewith, and when so considered will be held to mean void until amended as provided in section twenty-five, but not wholly void; the amendment being held to relate back to the original location.[34] But a certificate, so recorded, which does not refer to a natural object or permanent monument is insufficient, and a statement that the claim is "situated on the north side of Iowa Gulch, about timber line, on the west side of Bald Mountain. Said claim is staked and marked as the law directs," — is not a sufficient reference to a natural object or permanent monument by which to identify the claim, as provided by the Colorado statute requiring the certificate of location to give "such description as shall identify the claim with reasonable certainty."[35]

The Montana statute,[36] among other supplementary regulations, formerly provided that the declaratory statement filed in the office of the clerk of the county in which the lode or claim is situated must contain "the location and description of each corner, with the markings thereon." It has been held that this provision is not too stringent, nor does it conflict with the liberal purpose manifested by Congress

[33] Erhardt v. Boaro, 113 U. S. 527, bk. 28 L. ed. 1113, 5 Sup. Ct. Rep. 560, 15 Morr. Min. Rep. 447, 472; Cheesman v. Shreeve, 40 Fed. Rep 787, 17 Morr. Min. Rep. 260.

[34] McEvoy v. Hyman, 25 Fed. Rep. 596, 15 Morr. Min. Rep. 397.

[35] Faxon v. Barnard, 4 Fed. Rep. 702, 2 McC. C. C. 44, 9 Morr. Min. Rep. 515.

[36] Mont. Pol. Code, §§ 3612 et seq.

in its legislation respecting mining claims.[37] As the court said, "It may well be that the state legislature, in its desire to guard against false testimony in respect to a location, deemed it important that full particulars in respect to the discovery-shaft and the corner-posts should be, at the very beginning, placed of record. Even if there were no danger of false testimony, it was not unreasonable to guard against the resurrection of incomplete locations when, by subsequent explorations, mining claims of great value have been uncovered."

Under this statute it is held that a declaratory statement which complied with the statute in every respect, except that it did not show upon its face that the stakes, which were used at the corners of the claim, were in fact four feet six inches in length, was a substantial compliance with the statute.[38]

The above statute was repealed in 1907 and an entirely new act passed by the Montana legislature, providing for the location and recordation of mining claims, both lode and placer.[38a] This new statute will be found set out verbatim in Part II of this work.

In a recent Montana case[39] the declaratory statement contained the following: "For the purpose of perfecting the location of said claim as required by law, the undersigned have heretofore, and within ninety days after posting said notice of location, dug a tunnel at the point of discovery of the following dimensions: about twelve feet long, six by four and one-half, cut three feet deep, six feet wide, wherein is disclosed a well-defined crevice and valuable deposit of ore." It was held that this statement did not meet the requirements of the Montana statute, in that it did not appear that a vein or lode was cut at the depth of ten feet below the surface, since if, instead of sinking a shaft to the depth of ten feet in the clear upon

[37] Butte City Water Co. v. Baker, 196 U. S. 119, bk. 49 L. ed. 409, 25 Sup. Ct. Rep. 211.

[38] Walker v. Pennington, 27 Mont. 369, 71 Pac. Rep. 156.

[38a] Laws Mont. 1907, pp. 18 to 23.

[39] Dolan v. Passmore (Mont., 1906), 85 Pac. Rep. 1031.

Min L. — 9

the vein, the equivalent work is done, it must be either by cut, crossent, or tunnel cutting the vein at a depth of at least ten feet, or by an open cut ten feet in length along the vein, and it must appear from the record that this has been done; that a failure to observe these requirements is fatal to the location, because the record cannot be supplemented by proof of what was actually done.

In a recent case in Alaska[40] the recorded notice stated that the locator "has staked the following described placer mine ground in the Fairbanks District. I claim No. 13 A. Below Discovery on Cleary Creek, 1320 feet up and down stream and 330 feet each side of center stake." It was conceded in that case, that, under the system of locating mines in Alaska, and when first discovery is generally called and known "the discovery claim," and when it is within a gulch or on a stream, the claims are marked or numbered from discovery claim up or down the gulch or stream. The court said: "Cleary Creek is a natural object, and there is no evidence tending to show that the discovery claim referred to in the above notice was not a well-known and clearly defined mining claim on Cleary Creek, and, in the absence of evidence showing that it was not, it must be presumed that the same was a well-known claim, with definite boundaries, and therefore a natural object or permanent monument, within the meaning of the statute."

§ 165. **Same. Amendments.** Statutes in several of the states expressly authorize the amendment of the location-certificate required to be filed, and such an amendment operates by relation to the date of the discovery and notice of location, provided, of course, intervening rights have not accrued.[41]

In Colorado, a statute expressly provides that if the locator of a mining claim shall apprehend that his original certificate of location was defective or erroneous, or that the requirements of the law in making a location had not been

[40] Smith v. Cascaden (C. C. A.), 148 Fed. Rep. 792.

[41] Strepey v. Stark, 7 Colo. 614, 5 Pac. Rep. 111, 17 Morr. Min. Rep. 28. See also Oscamp v. Crystal Riv. Min. Co., 58 Fed. Rep. 293, 7 C. C. A. 233, 17 Morr. Min. Rep. 651.

complied with, or in case he desires to change the surface boundaries of his claim, or take in any part of an overlapping claim which has been abandoned, he may file an additional certificate. The evident purpose of this statute is to permit the locator to cure errors and defects, or to supply omissions, so that a location which was merely defective might be rendered perfect, and also to take in territory embraced in abandoned overlapping claims, if so desired. It cannot avail, however, except when it appears that there has been an original location which is valid, although imperfect. In other words, there must be some rights in the locator filing such amended certificate to the ground which it purports to include; otherwise it is of no effect.[42]

In Montana,[43] a statute allows the filing of an additional or amendatory location-certificate in cases where the original was defective, or where a locator has misdescribed his claim as running easterly and westerly; and he may file an amended location-certificate that the claim runs northerly and southerly, to conform to description as stated in the original location-certificate, as accorded with the actual staking on the ground as made at the time of the original location.[44]

§ 166. Effect of record as evidence. While the local record of a mining community may be, and probably is, the best evidence of the rules and customs governing the community, and to some extent the distribution of mining rights, it is not the best or the only evidence of priority or extent of actual possession. But such rules and customs no more determine who was the first locator, or where he located, than any other competent evidence of that fact. Whatever may be the effect given to the record of mining claims under the act of 1872, it certainly cannot be greater than that which is given to the registration laws of the states, and they have never been held to exclude parol proof of actual possession, and its extent, as prima facie evidence of title.[45]

[42] Sullivan v. Sharp, 33 Colo. 346, 80 Pac. Rep. 1054.

[43] Mont. Laws 1901, p. 56.

[44] Wilson v. Freeman, 29 Mont. 170, 75 Pac. Rep. 84.

[45] Campbell v. Rankin, 99 U. S. 261, bk. 25 L. ed. 435, 12 Morr. Min. Rep. 257.

CHAPTER XVI.

ASSESSMENT-WORK, ANNUAL LABOR, ETC.

§ 167. Source of requirements.
§ 168. Purpose of statute.
§ 169. Not necessary after entry.
§ 170. Time when work must be done.
§ 171. What constitutes labor or improvements.
§ 172. Same. Valuation of work or labor.
§ 173. Same. Work done outside of claim.
§ 174. Same. Several claims held in common.
§ 175. Same. Claims must be contiguous.
§ 176. Same. Oil claims.
§ 177. By whom work to be done.
§ 178. Excuse for not performing labor.
§ 179. Proof of labor.
§ 180. Not question for land department.
§ 181. Performance of labor. Issuance of patent.
§ 182. Co-owners.
§ 183. Same. Who is a co-owner.
§ 184. Same. Notice to co-owners.
§ 185. Same. Publication of notice to co-owners.
§ 186. Tunnel claims.

§ 167. Source of requirements. Mineral lands being, by act of Congress, open to occupation or discovery, one of the first necessities of the locators in a mining neighborhood was the making of a rule by which this right of occupation should be governed as amongst themselves. It was soon discovered that the same person would mark out many claims of discovery and then leave them for an indefinite length of time, without further development and without actual possession of them, and thus seek to exclude others from availing themselves of the abandoned mine. To remedy this evil, a mining regulation was adopted, requiring some work to be done on each claim in every year, or it would be treated as abandoned.[1]

[1] Jackson v. Roby, 109 U. S. 440, bk. 27 L. ed. 990, 3 Sup. Ct. Rep. 311.

The Federal mining act, as it now stands, provides that on each claim located after the tenth day of May, 1872, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed, or improvements made, during each year. On all claims located prior to the tenth day of May, 1872, ten dollars' worth of labor shall be performed, or improvements made, by the tenth day of June, 1874, and each year thereafter, for each one hundred feet in length along the vein, until a patent has been issued therefor: but where such claims are held in common, such expenditure may be made upon any one claim.[2]

The acts of Congress of November 3, 1893, and July 18, 1894, relieved locators of mining claims from the necessity of performing assessment-work upon their claims for that year, and thereby prevented the penalty of forfeiture of a co-owner's interest by reason of his failure to contribute his share of the assessment-work done by the other co-owner, there being no vested interest in a right of forfeiture.[3]

§ 168. Purpose of statute. The purpose of the law requiring work to be done annually on a mining claim, to the amount, in value, of one hundred dollars, is to demonstrate the claimant's good faith, and a liberal construction should be given thereto. The law should be deemed to have been complied with when the labor is expended in making improvements for the purpose of developing the mine or facilitating the extraction or removal of ore therefrom. Mere proof of the expenditure of the specified amount of money is not, of itself, sufficient to establish the fact of such good faith, but is competent evidence, and tends strongly thereto; the real test being, not what was paid or contracted to be paid, but, Was that which was done worth the required

[2] U. S. Rev. Stats., § 2324; 5 Fed. Stats. Ann., p. 19; 2 Comp. Stats. 1901, p. 1426.

[3] 28 Stats. at L., pp. 6, 114. De Lamar's Nevada G. Min. Co. v. Nesbitt, 177 U. S. 523, bk. 44 L. ed. 872, 20 Sup. Ct. Rep. 715; Royston v. Miller, 76 Fed. Rep. 50, 52, 18 Morr. Min. Rep. 418.

sum? and was it expended in an attempt to comply with the law, in good faith?[4]

§ 169. **Not necessary after entry.** After the locator of a mining claim has applied for a patent thereto, has performed all the acts and conditions precedent to his right to a patent, has paid the purchase-money and received his certificate of purchase, the law does not require him to do any assessment-work on the mine.[5]

§ 170. **Time when work must be done.** The law has fixed no time within the year when the work must be done, further than to provide that the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and that this section should apply to all claims located after the tenth day of May, 1872.[6] The act of Congress of January 22, 1880, amending section two thousand three hundred and twenty-four of the United States Revised Statutes, fixing the first day of January in each year as the commencement of the period for doing annual assessment-work on mining claims, has no retrospective action to relieve a locator of a forfeiture which had occurred on the third day of January of that year.[7]

§ 171. **What constitutes labor or improvements.** Labor or improvements, in order to satisfy the statutory requirements as to expenditures on a mining claim, must actually

[4] McCulloch v. Murphy, 125 Fed. Rep. 147, 149.

[5] Benson Min. & S. Co. v. Alta Min. & S. Co., 145 U. S. 428, bk. 36 L. ed. 762, 12 Sup. Ct. Rep. 877, 17 Morr. Min. Rep. 488. See also Aurora Hill Consol. Min. Co. v. Eighty-five Min. Co., 34 Fed. Rep. 515, 12 Sawy. C. C. 355, 15 Morr. Min. Rep. 581.

[6] Belk v. Meagher, 104 U. S. 279, bk. 26 L. ed. 735, 1 Morr. Min. Rep. 510, where it was held that work done in June, 1875, gave the locator, or those claiming under him, an exclusive right to and enjoyment of the claim, under June 1, 1877; Mills v. Fletcher, 100 Cal. 142, 147, 34 Pac. Rep. 637, 17 Morr. Min. Rep. 671.

[7] Slavonian Min. Co. v. Perasich, 7 Fed. Rep. 331, 7 Sawy. C. C. 217, 1 Morr. Min. Rep. 511. See also Northmore v. Simmons, 97 Fed. Rep. 386, 38 C. C. A. 211, 20 Morr. Min. Rep. 128.

promote, or directly tend to promote, the extraction of mineral from the land, or forward or facilitate the development of the claim as a mine or mining claim, or be necessary for its care, or the protection of the mining-works thereon, or pertaining thereto.[8] A quartz-mill situated on one of the claimant's claims in another group, even if constructed by him for the express purpose of crushing ores from the claims embraced in the entry in question, cannot be accepted as an improvement made for the benefit of those claims, or either of them, within the meaning and intent of the statute.[9] The extension of a flume over premises claimed as a mining claim, and their use as a place of deposit for the waste material from adjoining claims, is not sufficient to sustain the right of possession, under the statute providing that where several mining claims are held in common, the labor or expenditure required can be made on any one of them.[10] The cases must necessarily be rare in which it can justly be said that money expended in the employment of watchmen to preserve structures, is expended in prospecting or working the mine. There may be cases where work has been temporarily suspended, and there are structures which are likely to be lost if not cared for, and it appears that the structures will be required when work is resumed, and that the parties do intend to resume work, in which money expended to preserve the structures will be on the same basis as money expended to create them anew. But this could not go on indefinitely. As soon as it should appear that this was done merely to comply with the law, and to hold the property, without any intent to make use of such structures within a reasonable period, such expenditure cannot be said to have been made in work upon the mine. Much less can the mine-

[8] **U. S.** United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195; Book v. Justice Min. Co., 58 Fed. Rep. 106; Gird v. California Oil Co., 60 Fed. Rep. 531.

Cal. McCormick v. Baldwin, 104 Cal. 227, 37 Pac. Rep. 903.

Mont. Honaker v. Martin, 11 Mont. 91, 27 Pac. Rep. 397, 17 Morr. Min. Rep. 401.

Oreg. Bishop v. Balsley, 28 Oreg. 119, 41 Pac. Rep. 136.

Utah. Klopenstine v. Hays, 20 Utah 15, 57 Pac. Rep. 712.

[9] Highland, Marie and Manilla Lode Min. Claims, 31 Land Dec. 37.

[10] Jackson v. Roby, 109 U. S. 440, bk. 27 L. ed. 990, 3 Sup. Ct. Rep. 301.

owner bring picks, shovels, and things of that kind, upon the mine, and have some one to watch them to prevent their being stolen, and have such cost of watching considered as work upon the mine.[11]

Improvements made prior to the location of the claim or claims to which their value is sought to be accredited are not available toward meeting the requirements of the statute relative to expenditures.[11a]

§ 172. **Same. Valuation of work or labor.** The labor or work must be of the actual value of one hundred dollars.[12] And that fact is not always to be determined by the amount of money paid for it, although evidence thereof may be received.[13]

§ 173. **Same. Work done outside of claim.** It is not necessary that assessment-work be done within the surface boundaries of a claim; it is sufficient if it is done in fact for the development of the claim, and tends thereto.[14] As was said in another case,[15] "Work done outside of the claim, outside of any claim, if done for the purpose and as a means of prospecting or developing the claim, as in the case of tunnels, drifts, etc., is as available for holding the claim as if done within the boundaries of the claim itself. One general system may be formed well adapted and intended to work several contiguous claims or lodes, and when such is the case, work in furtherance of the system is work on the claims intended to be developed."

[11] Hough v. Hunt, 138 Cal. 142, 70 Pac. Rep. 1059, 94 Am. St. Rep. 17. See also Gear v. Ford, 3 Cal. App. Dec. 457.

[11a] 36 Land Dec. 9.

[12] Wagner v. Dorris, 43 Oreg. 392, 73 Pac. Rep. 318.

[13] Whalen Consol. C. Min. Co. v. Whalen, 127 Fed. Rep. 611; Wright v. Killian, 132 Cal. 56, 64 Pac. Rep. 98; Stolp v. Treasury G. Min. Co., 28 Wash. 619, 80 Pac. Rep. 817.

[14] U. S. Book v. Justice Min. Co., 58 Fed. Rep. 106; Royston v. Miller, 76 Fed. Rep. 50.

Colo. Doherty v. Morris, 17 Colo. 105, 28 Pac. Rep. 85; Hall v. Kearny, 18 Colo. 505, 33 Pac. Rep. 373, 17 Morr. Min. Rep. 594.

Mont. Power v. Sla, 24 Mont. 243, 61 Pac. Rep. 468, 20 Morr. Min. Rep. 659.

[15] Mount Diablo M. & M. Co. v. Callison, 5 Sawy. C. C. 439, 17 Fed. Cas. 918, 9 Morr. Min. Rep. 616.

§ 174. **Same. Several claims held in common.** It often happens that, for the development of a mine upon which several claims have been located, expenditures are required exceeding the value of a single claim, and yet without such expenditures the claim could not be successfully worked. In such cases it has always been the practice for the owners of different locations to combine, and to work them as one general claim; and expenditures which may be necessary for the development of all the claims may then be made upon one of them. The law does not apply to cases where several claims are held in common, and all the expenditures made are for the development of one of them without reference to the development of the others. In other words, the law permits a general system to be adopted for adjoining claims held in common, and in such case the expenditures required may be made or the labor be performed upon any one of them.[16]

An aggregate expenditure of labor or improvements upon one of several contiguous claims held in common satisfies the statutory requirements only when such expenditure actually promotes, or directly tends to promote, the practically contemporary development of all the claims conserved; for a scheme of successful development of such claims, in the absence of an expenditure for the direct benefit of each, is not within the spirit of the privilege accorded by the statute, since it does not tend to facilitate the extraction of mineral from each claim at the time the expenditure therefor is made.[17]

The owner of several adjoining claims may do the assessment-work for all the claims upon one thereof, or, if the other claims are in reasonable proximity to it, if the work

[16] Jackson v. Roby, 109 U. S. 440, bk. 27 L. ed. 990, 3 Sup. Ct. Rep. 301. This was the case of a placer mine, in which the tailings from one claim were carried by a flume and deposited on another, which was contiguous, and it was held that this latter claim was not aided by that; its development rather was injured by this work, and, accordingly, was not kept valid by the work. Some remarks were made in opinion which would not, perhaps, be applied to discovery and work done in developing lodes or veins.

[17] Wood Placer Min. Co., 32 Land Dec. 401. See also Jas. Caretto and Other Lode Claims, 35 Land Dec. 362.

so done upon one for all would be beneficial to all and tend to their future development and improvement.[18]

The situation disclosed in most of the decided cases is that of a shaft sunk upon or tunnel driven from one of the claims, or without the group, to reach the vein or ledge of each at a depth which would render the cost of separate shafts or drafts excessive, or sometimes prohibitive; or of the construction of a flume and the introduction of water for the purpose of washing placer mineral from each claim. But, whether lode or vein, it must appear that the entire group will integrally profit by the work done upon one or more, or wholly outside of the claims. The labor or improvements so performed or made must be of such a character as to promote the development of each claim.[19]

An excavation made upon one of a group of placer mining claims, containing deposits or formations of marble so near the surface as to be most advantageously removed by means of quarries, and which does not tend to facilitate the extraction of marble from the other claims of the group, or to permit their development, is not such an improvement as may be accepted in satisfaction of the statute requiring an expenditure of five hundred dollars in labor or improvements upon, or for the benefit of, each of the claims constituting the group, as a condition to obtain patent thereto.[20]

Group of claims. No part of the value of the work done or the improvements made upon a group of contiguous mining claims, in pursuance of a general system alleged to have been adopted for the common development of the group and an adjoining claim, can be accredited to the adjoining claim in satisfaction of the statutory requirements relative to the expenditure of five hundred dollars, where any one of the owners of said claim is without interest in the group upon which the improvements are located.[21]

Work on patented claim. As to work done upon one of a group of claims, it will avail, even if done upon a claim

[18] Justice Min. Co. v. Barclay, 82 Fed. Rep. 554, 19 Morr. Min. Rep. 68.

[19] Surprise, Fraction and Other Lode Claims, 32 Land Dec. 93.

[20] Elmer F. Cassel, 32 Land Dec. 85.

[21] Black Lead Lode Extension, 32 Land Dec. 595.

which has gone to patent; indeed, it is immaterial whether the work is done upon patented or unpatented ground, except as this may throw light upon the intention of the parties doing the work, provided, of course, the work is sufficient in other respects.[22]

§ 175. Same. Claims must be contiguous. To authorize the holders of several claims in common to do all the work on one claim which is necessary to keep them all alive, they must all be contiguous.[23]

§ 176. Same. Oil claims. Annual work on oil claims seems to be limited to groups of five claims.[24]

§ 177. By whom work to be done. The law requires the annual labor to be performed either by the owner or owners, or by a duly authorized agent.[25]

§ 178. Excuse for not performing labor. Non-performance of the annual labor is excused where it appears that the owner is wrongfully ousted and forcibly kept out of the possession of the claim.[26] But the locator of a mining claim will not be relieved of a forfeiture occasioned by his failure to do assessment-work, upon the ground of threats made by a trespasser, without showing a bona fide effort to perform the work notwithstanding the trespass.[27]

[22] Justice Min. Co. v. Barclay, 82 Fed. Rep. 554, 19 Morr. Min. Rep. 68; Hall v. Kearny, 18 Colo. 505, 33 Pac. Rep. 373, 17 Morr. Min. Rep. 591; Strasburger v. Beecher, 20 Mont. 143, 49 Pac. Rep. 740; Sherlock v. Leighton, 9 Wyo. 297, 63 Pac. Rep. 580, 934.

[23] Royston v. Miller, 76 Fed. Rep. 50, 18 Morr. Min. Rep. 418; Gird v. California Oil Co., 60 Fed. Rep. 531, 539, 18 Morr. Min. Rep. 45; Chambers v. Harrington, 111 U. S. 350, bk. 28 L. ed. 452, 4 Sup. Ct. Rep. 428.

[24] See Stats. 1903, act of Feb. 12; 32 Stats. at L., p. 825; 10 Fed. Stats. Ann., p. 236; Comp. Stats. Suppl. 1905, p. 331.

[25] Turner v. Sawyer, 150 U. S. 578; bk. 37 L. ed. 1189, 14 Sup. Ct. Rep. 192, 17 Morr. Min. Rep. 683. See also Nesbitt v. Delamar's Nevada G. Min. Co., 24 Nev. 273, 52 Pac. Rep. 609, 53 Id. 178, 77 Am. St. Rep. 807, 19 Morr. Min. Rep. 286.

[26] Erhardt v. Boaro, 113 U. S. 527, bk. 28 L. ed. 1113, 5 Sup. Ct. Rep. 560, 8 Fed. Rep. 692, 15 Morr. Min. Rep. 472; Trevaskis v. Peard, 111 Cal. 599, 44 Pac. Rep. 246, 18 Morr. Min. Rep. 353.

[27] Slavonian Min. Co. v. Perasich, 7 Fed. Rep. 331, 335, 7 Sawy. C. C. 217, 1 Morr. Min. Rep. 511.

§ 179. **Proof of labor.** In several of the states there are statutes requiring proof of the performance of the annual labor, by affidavit or otherwise, to be recorded with the proper officer.[28]

§ 180. **Not question for land department.** Questions as to the making of the annual expenditure upon mining claims, and as to relocations alleged to have been made by reason of failure to make such expenditures, or duly to resume work, are not for determination by the land department, but are matters to be adjudicated by the courts.[29]

§ 181. **Performance of labor. Issuance of patent.** The sufficiency of the work performed and the improvements made upon each of the claims patented, is shown by the certificate of the surveyor-general of the United States for the state in which the claim is situated. The statutes make his certificate evidence of that fact.[30]

In a suit in support of an adverse claim, an objection that the claimant had not performed on the claim sought to be patented, five hundred dollars in work or improvements, is not proper; that is a question exclusively for the land-office.[31]

§ 182. **Co-owners.** The statute authorizes proceedings to be had against a delinquent co-owner of a mining claim only by the co-owner who has performed the labor or made the improvements. A co-owner who has not made the required expenditure is not within the terms of the statute, and is not in a position to take advantage of its forfeiture provisions.[32] In this case the notice of the co-owner claiming to have made the expenditure showed such expenditure

[28] Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617; Quigley v. Gillett, 101 Cal. 462, 35 Pac. Rep. 1040, 18 Morr. Min. Rep. 65; Davidson v. Bordeaux, 15 Mont. 215, 38 Pac. Rep. 1075.

[29] Cleveland v. Eureka No. 1 Min. & M. Co., 31 Land Dec. 69.

[30] United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195.

[31] Wilson v. Freeman, 29 Mont. 470, 75 Pac. Rep. 84; P. Wolenberg et al., 29 Land Dec. 301.

[32] Golden and Cord Lode Min. Claims, 31 Land Dec. 178.

of only one hundred dollars upon the two mining claims mentioned for each of the years 1895 and 1897. The sum of two hundred dollars was the total expenditure made by the co-owner, according to his own showing, upon the two claims for the two years, with respect to which contribution was called for in the notice. And a co-owner who has been omitted from an application for patent to a mining claim cannot, by subsequent forfeiture proceedings against the applicant co-owner, acquire any right for himself to make entry under the application.[33]

Where it is claimed that a co-owner has forfeited his interest in a claim by reason of his failure to pay his share of the assessment-work alleged to have been done by the other co-owner, the question of the bona fides of the attempt of the latter to obtain the forfeiture of his co-owner's interest has no part in the questions to be considered by the jury in aid of determining whether he did the required assessment-work, or otherwise.[34] As was said in the case so holding, "The law does not favor forfeiture. It is true that it has been held, in cases where it has been sought to establish a relocation of a mining claim, that the bona fides of the prior locator might be taken into consideration in determining whether he had done the necessary assessment-work to retain his claim. But this was held on the ground that courts are reluctant to enforce a forfeiture, and will not do so, except upon clear and convincing proof of the failure of the former owner to perform the amount of labor required by law."

§ 183. Same. Who is a co-owner. The interest of a co-owner of a mining claim to which the forfeiture provision of section two thousand three hundred and twenty-four relates, and which may be acquired under and in accordance therewith, is such co-owner's share or interest in the purely possessory right which subsists under a mining location, and not in any rights acquired under an application for a

[33] Surprise, Fraction and Other Lode Claims, 32 Land Dec. 93.
[34] McKay v. Neussler (C. C. A.), 148 Fed. Rep. 86.

patent.[35] Nor is the holder of a sheriff's certificate of sale at an execution sale under a judgment, in an action in which the locator was not served with process, nor appearance entered for him, nor judgment rendered against him, and in which he was never in court, no deed for such interest having been delivered until the next year after the labor was performed, a co-owner.[36]

§ 184. Same. **Notice to co-owners.** The requirements of the statute[37] as to publication of notice to co-owners are properly fulfilled, although the publication for the last week is made before the ninetieth day has elapsed, and no publication is made thereafter.[38] Nor is it necessary that notice to co-owners specifically give the names and addresses of the heirs.[39] The court, in this case, said: "The act does not require it. If the notice be such that the former owner is particularly named and identified thereby, and his heirs are notified by the publication, it is a sufficient notice to them for the purpose of making it necessary for them to comply with the terms of the statute within the time designated therein by the payment of their share of the expenses of working the mine, or else to lose their right, title, and interest therein. The co-owner who did the work might not know who the heirs were, and it might be impossible for him to learn their names or whereabouts, and the statute never contemplated that the man who did the work should be prevented from obtaining the benefit of the statute by his inability to learn who the heirs were and where they lived. A general address to the heirs of the person named, and the proper publication of the notice, is sufficient. It did not become insufficient because, in addition to being addressed

[35] Surprise, Fraction and Other Lode Claims, 32 Land Dec. 93.

[36] Turner v. Sawyer, 150 U. S. 578, bk. 37 L. ed. 1189, 14 Sup. Ct. Rep. 192, 17 Morr. Min. Rep. 683.

[37] U. S. Rev. Stats., § 2324; 5 Fed. Stats. Ann., p. 19; 2 Comp. Stats. 1901, p. 1426.

[38] Elder v. Horseshoe Min. & M. Co., 194 U. S. 248, bk. 48 L. ed. 960, 24 Sup. Ct. Rep. 643.

[39] Elder v. Horseshoe Min. & M. Co., 194 U. S. 248, bk. 48 L. ed. 960, 24 Sup. Ct. Rep. 643.

to them, it was also addressed to their intestate by name. An address to a deceased person did them no harm, so long as it was also addressed to them."

§ 185. **Same. Publication of notice to co-owners.** Although the administrator of a deceased co-owner may be held by the state courts to have a lien upon real estate for administration purposes, still it is unnecessary to publish notice to an administrator for this reason, since the statute does not require notice to be published to lienors.[40]

§ 186. **Tunnel claims.** The Federal mining law provides that failure to prosecute the work on the tunnel for six months shall be considered an abandonment of the right to all undiscovered veins on the line of the tunnel.[41]

[40] Elder v. Horseshoe Min. & M. Co., 194 U. S. 248, bk. 48 L. ed. 960, 24 Sup. Ct. Rep. 643.

[41] Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 167 U. S. 108, 110, bk. 42 L. ed. 96, 17 Sup. Ct. Rep. 762, 18 Morr. Min. Rep. 661; Hope Min. Co. v. Brown, 11 Mont. 370, 28 Pac. Rep. 732.

CHAPTER XVII.

ABANDONMENT.

§ 187. In general.
§ 188. Granting permission to enter and locate.

§ 187. In general. Abandonment of a mining claim is a matter of intention, and operates instanter. When a miner gives up his claim and goes away from it without any intention of repossessing it, and, regardless of what may become of it or who may appropriate it, an abandonment takes place, and the property reverts to its original status as a part of the unoccupied public domain, and is then open to location by the first comer.[1] As has been well said,[2] "In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry; for there can be no strict abandonment of property without the intention to do so; thus differing from the loss of right by forfeiture under mining laws, or by the failure to use and occupy where no such laws govern, and in this, too, that abandonment may be complete the very instant the miner leaves his claim, for time is not an essential element of abandonment; the moment the intention to abandon and the relinquishment of possession unite, the abandonment is com-

[1] **U. S.** Lakin v. Sierra Buttes Gold Min. Co., 25 Fed. Rep. 337, 341; Harkrader v. Carroll, 76 Fed. Rep. 474, 18 Morr. Min. Rep. 474; Brown v. Gurney (U. S. Sup. Ct., 1907).

Ariz. Kinney v. Fleming, 6 Ariz. 263, 56 Pac. Rep. 723, 20 Morr. Min. Rep. 13.

Cal. Davis v. Butler, 6 Cal. 510, 1 Morr. Min. Rep. 7; St. John v. Kidd, 26 Cal. 263, 4 Morr. Min. Rep. 454; Myers v. Spooner, 55 Cal. 257, 260; McCann v. McMillan, 129 Cal. 350, 62 Pac. Rep. 31, 21 Morr. Min. Rep. 6.

Colo. Derry v. Ross, 5 Colo. 295, 300, 1 Morr. Min. Rep. 1; Omar v. Soper, 11 Colo. 380, 18 Pac. Rep. 443, 7 Am. St. Rep. 246, 15 Morr. Min. Rep. 496; Peoria & C. M. & M. Co. v. Turner, 20 Colo. App. 474, 79 Pac. Rep. 915; Conn v. Oberto, 32 Colo. 313, 76 Pac. Rep. 369.

Oreg. Sharkey v. Candiani (Oreg., 1906), 85 Pac. Rep. 219.

[2] Mallett v. Uncle Sam G. & S. Min. Co., 1 Nev. 188, 1 Morr. Min. Rep. 17.

plete. But lapse of time may often be a strong circumstance, when connected with others, to prove the intention to abandon, though the bare lapse of time, short of the statute of limitations, and unconnected with any other circumstance, would be no evidence of abandonment — though the right might be lost, as before stated."

Abandonment of a mining claim takes place when the locator goes away and leaves it without any intention of returning, having no regard for what becomes of the claim or who may appropriate it. But to leave a claim with the intention of returning later is not an abandonment.[3]

The omission of part of the location, not including the discovery-shaft, in an application for patent, does not thereby abandon that portion not included in the patent. By retaining the possession thereof, and performing the requisite annual labor thereon, the locator's right of possession thereof remains as before.[4]

The mere fact that one tenant in common, or partner, goes away and remains absent from the premises of the joint business or property, leaving his associates in possession, creates no presumption of abandonment; nor does his refusal to pay, or delay in paying, the expenses of the business, or the assessments required to be paid by law, create, of themselves, a forfeiture.[5]

A statute providing that no interest in land shall be created, except by act of location, or by deed or conveyance in writing signed by the parties creating the same, does not apply to an abandonment by the original locator of a mining claim, and permission to another to locate a claim thereon.[6]

§ 188. **Granting permission to enter and locate.** So if a locator of a mining claim, in possession thereof, permits another to enter his premises and make a junior location, and search therein for mineral by sinking a discovery-shaft, and such junior locator becomes the prior discoverer of

[3] Davis v. Dennis (Wash., 1906), 85 Pac. Rep. 1079.
[4] Miller v. Hamley, 31 Colo. 495, 74 Pac. Rep. 980.
[5] Waring v. Crow, 11 Cal. 366, 5 Morr. Min. Rep. 204.
[6] Conn v. Oberto, 32 Colo. 313, 76 Pac. Rep. 369.

mineral in rock in place therein, he has the better right, although the senior locator steadily prosecuted his work and also discovered mineral therein in place, but subsequent to the discovery thereof by the junior locator defendant. The senior locator might have protected his possession while searching for mineral, but by his standing by and allowing others to enter upon his claim and first discover mineral in rock in place, the law gives such first discoverer title thereto.[7]

The action of the owners of three fourths of a mining claim, in granting permission to another to enter into possession thereof, and locate another claim, constitutes an abandonment, on their part, of the claim, but does not deprive the owner of the remaining portion of the claim of his interest therein.[8] And in such case a statement by the owner of the remaining portion of the claim to one of his co-owners, that he does not care to have anything more to do with the claim, constitutes an abandonment of his interests therein, and is a ratification of the act of his co-owners in permitting another to locate on the claim.[9]

[7] Crossman v. Pendery, 8 Fed. Rep. 693, 2 McC. C. C. 139, 4 Morr. Min. Rep. 431.

[8] Conn v. Oberto, 32 Colo. 313, 76 Pac. Rep. 369.

[9] Conn v. Oberto, 32 Colo. 313, 76 Pac. Rep. 369.

CHAPTER XVIII.

FORFEITURE

§ 189. In general.
§ 190. Distinction between "forfeiture" and "abandonment."
§ 191. Failure to do necessary work.
§ 192. Resumption of work.
§ 193. Same. Relocation.
§ 194. Same. Burden of proof.

§ 189. In general. The interest in a mining claim, prior to the payment of any money for the grant on the patent for the land, is nothing more than a right to the possession of the land, based upon conditions subsequent, and failure to perform such conditions forfeits the locator's interest in the claim.[1]

One who, by his wrongful acts, as by force and arms, or by threats to do bodily harm, with a present ability to carry the same into execution, prevents a locator of a mining claim from fully completing his location, will not be permitted to derive any advantage therefrom, or to impeach the location on the ground of a failure to perform acts, which failure is so occasioned by his wrongful conduct.[2]

One who buys an interest in an unpatented mining claim at a void judicial sale, and pays the portion of the assessment-work due from the judgment debtor before the time to redeem has fully expired, taking a receipt therefor only, is not subrogated to the rights of the party seeking the forfeiture, and his payment, and its acceptance, prevents the forfeiture as against the judgment debtor.[3]

A forfeiture of a mining claim cannot be predicated upon a failure to observe a rule or regulation of miners, unless such rule or regulation expressly provides therefor.[4]

[1] Black v. Elkhorn Min. Co., 163 U. S. 445, bk. 41 L. ed. 221, 16 Sup. Ct. Rep. 1101, 18 Morr. Min. Rep. 375.

[2] Miller v. Taylor, 6 Colo. 41, 9 Morr. Min. Rep. 547.

[3] Dye v. Crary (N. M., 1906), 85 Pac. Rep. 1038.

[4] Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 111.

§ 190. **Distinction between "forfeiture" and "abandonment."** The terms "forfeiture" and "abandonment" are not synonyms. The first depends upon acts alone; the second, largely upon intention. The first is a consequence which the law attaches to the failure of the party to do certain acts; the second depends upon the acts of the party.[5]

§ 191. **Failure to do necessary work.** Although the statute is not complied with by doing the work as therein provided, forfeiture does not result ipso facto, as between the locator and the government.[6] But if another locates before such work is done or resumed, the latter is a valid location.[7]

Mere holding possession, where the locator has in fact not performed the necessary work, is not sufficient to remove the claim from the category of unoccupied land, or to prevent another from making a valid location thereon.[8]

A co-owner of a mining claim, whose duty it is and who undertakes to do all of the assessment-work, and reports to his co-workers that he has done the work necessary to represent the claims, cannot take advantage of his own wrong in failing therein, and thereby acquire an advantage over his co-owners.[9]

§ 192. **Resumption of work.** Although a locator of a mining claim so neglects to perform the necessary assessment-work that a forfeiture might occur, yet if, before other rights attach, he resumes possession and work, he thereby avoids the forfeiture, and preserves his right to the claim, provided he returns and resumes work and is actually engaged therein at the time of the trespass and attempted relocation.[10] To resume work within this rule

[5] St. John v. Kidd, 26 Cal. 264, 4 Morr. Min. Rep. 454.

[6] Beals v. Cone, 27 Colo. 473, 501, 62 Pac. Rep. 948, 83 Am. St. Rep. 92, 20 Morr. Min. Rep. 591; Field v. Tanner, 32 Colo. 278, 75 Pac. Rep. 916, 919.

[7] Lockhart v. Johnson, 181 U. S. 516, bk. 45 L. ed. 979, 21 Sup. Ct. Rep. 665.

[8] Goldberg v. Bruschl, 146 Cal. 708, 81 Pac. Rep. 23.

[9] Royston v. Miller, 76 Fed. Rep. 50, 18 Morr. Min. Rep. 418.

[10] U. S. Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Justice Min. Co. v. Bar-

requires that work must be actually begun anew, with the bona fide intention of prosecuting it as required by law.[11] But the original locator, after forfeiture incurred, would not be justified in making entry for the purpose of resuming work.[12]

§ 193. **Same. Relocation.** If a locator fails to do the assessment-work within the first period of time required, and thereby forfeits his claim, and procures another person to relocate it for him, which is done, and the claim conveyed to the original locator, who then, alone, or with others interested with him, enters upon the claim and does the necessary work thereon, and no other rights have in the mean time attached, such locator has acquired a valid right to the claim.[13]

§ 194. **Same. Burden of proof.** The burden of proof to establish a forfeiture of mines by reason of a failure to do the assessment-work required by the United States statutes, is upon the party asserting such forfeiture.[14] And to warrant a judgment forfeiting the right to a mining claim for failure to do the requisite assessment-work, the evidence of failure therein must be clear and convincing, and the burden of proof thereof is with the party asserting such failure and consequent forfeiture.[15]

clay, 82 Fed. Rep. 554, 561, 19 Morr. Min. Rep. 68; Fee v. Durham, 121 Fed. Rep. 468, 57 C. C. A. 584.

Ark. Buffalo Zinc & C. Co. v. Crump, 70 Ark. 525, 539, 91 Am. St. Rep. 87, 69 S. W. Rep. 572, 22 Morr. Min. Rep. 276.

Cal. Emerson v. Yosemite G. M. & M. Co., 149 Cal. 50, 85 Pac. Rep. 122.

Colo. Field v. Tanner, 32 Colo. 278, 75 Pac. Rep. 916, 919.

[11] McCormick v. Baldwin, 101 Cal. 227, 37 Pac. Rep. 903. See also Hirschler v. McKendricks, 16 Mont. 211, 40 Pac. Rep. 290; Emerson v. Yosemite G. M. & M. Co., 149 Cal. 50, 85 Pac. Rep. 122.

[12] Slavonian Min. Co. v. Perasich, 7 Fed. Rep. 331, 336, 7 Sawy. C. C. 217, 1 Morr. Min. Rep. 541.

[13] North Noonday Min. Co. v. Orient Min. Co., 1 Fed. Rep. 522, 536, 6 Sawy. C. C. 299, 9 Morr. Min. Rep. 524. See also Warnock v. De Witt, 11 Utah 324, 328, 40 Pac. Rep. 205.

[14] Whalen Consol. Copper Min. Co. v. Whalen, 127 Fed. Rep. 611.

[15] McCulloch v. Murphy, 125 Fed. Rep. 147, 150. See also Goldberg v. Bruschi, 146 Cal. 708, 81 Pac. Rep. 23; Gear v. Ford, 4 Cal. App. Rep. ——

To support a claim of forfeiture, prima facie, by reason of a failure to do annual assessment-work, it is sufficient to prove that no work was done for the year, within the surface boundaries of the claim. If it is contended, in opposition thereto, that work was done outside the boundaries, which should be credited to the claim, the burden is on the parties so asserting to show that the work so done was in fact development-work tending to its benefit, and was in fact intended to be such assessment-work.[16]

[16] Hall v. Kearny, 18 Colo. 505, 33 Pac. Rep. 373, 17 Morr. Min. Rep. 594.

CHAPTER XIX.

RELOCATION.

§ 195. In general.
§ 196. Prior location must have been made.
§ 197. Ground must be open to relocation.
§ 198. Mode of relocation.
§ 199. New discovery not necessary.
§ 200. By whom relocation may be made.
§ 201. Same. By agent of original locator.
§ 202. Same. By co-owner.
§ 203. Same. By lessee.
§ 204. From what time relocation dates.
§ 205. When improvements pass by relocation.
§ 206. Improvements by prior locator not available to relocator as assessment.

§ 195. In general. Relocation is the appropriation of mining-ground embraced in a prior location which has been abandoned or forfeited.[1]

§ 196. Prior location must have been made. By claiming the ground as a relocator of the original lode, "he impliedly admits the validity of the prior location. There can be no relocation, unless there has been a prior valid location, or something equivalent, of the same property."[2] But relocation may be made immediately after a judgment in an action to recover possession of certain mining claims, finding that neither one of the parties had any possessory rights in the claim in question.[3]

§ 197. Ground must be open to relocation. A location can be made only where the law allows it to be made. Any attempt to go beyond that will be of no avail. Hence a

[1] Belk v. Meagher, 104 U. S. 279, bk. 26 L. ed. 735, 1 Morr. Min. Rep. 510; Warnock v. De Witt, 11 Utah 324, 40 Pac. Rep. 205.

[2] Belk v. Meagher, 104 U. S. 279, bk. 26 L. ed. 735, 1 Morr. Min. Rep. 510, 520.

[3] Lauman v. Hoofer, 37 Wash. 382, 79 Pac. Rep. 953.

relocation on lines actually covered at the time by another valid and subsisting location, is void;[4] and this, not only against the prior location, but against all the world, because the law allows no such thing to be done.[5]

Until after actual forfeiture or abandonment has taken place, no valid relocation can be made;[6] the law does not tolerate a provisional location, the validity of which is to depend upon the future action of a prior locator in doing or not doing the annual assessment-work.[7]

A relocator of a mining claim is not a discoverer of mineral, but an attempted appropriator thereof, and to maintain his location he must by strong and satisfactory proof establish the fact that the prior location was abandoned or forfeited prior thereto. A relocation impliedly admits the fact of a valid prior location, and precludes the relocator from contesting it.[8]

A mining claim is not open to relocation in the night-time because of the absence therefrom of, and a cessation of work by, a prior locator during such night-time only, but who was engaged in assessment-work in the daytime during the days both preceding and succeeding the night of such relocation; the entry, therefore, being a trespass, the attempted relocation is void.[9]

§ 198. **Mode of relocation.** In some of the mining states, as, for example, in Arizona and Colorado, it is expressly required that in the case of a relocation of an abandoned or forfeited lode claim the notice or certificate of location shall state if the whole or any part of the relocated ground is located as abandoned property; otherwise the relocation

[4] Sullivan v. Sharp, 33 Colo. 346, 80 Pac. Rep. 1054, and cases cited; Moffat v. Blue River Gold Excav. Co., 33 Colo. 142, 80 Pac. Rep. 139; Malone v. Jackson, 137 Fed. Rep. 878, 70 C. C. A. 216.

[5] Belk v. Meagher, 104 U. S. 279, bk. 26 L. ed. 735, 1 Morr. Min. Rep. 510.

[6] Lockhart v. Farrell (Utah, 1906), 86 Pac. Rep. 1077.

[7] Slavonian Min. Co. v. Perasich, 7 Fed. Rep. 331, 333, 7 Sawy. C. C. 217, 1 Morr. Min. Rep. 541.

[8] Zerres v. Vanina, 134 Fed. Rep. 610, 614; affirmed (C. C. A., 1907), 150 Fed. Rep. 564.

[9] Willitt v. Baker, 133 Fed. Rep. 937, 945.

is void.[10] This statute is held not to be in conflict with the statutes of the United States,[11] and is specific in its requirements. Under it, a person who seeks to take advantage of the loss, by abandonment or forfeiture, of a locator's possessory title, by relocating such claim, must, in order to have his location-certificate valid, recite therein that he locates the claim, in whole or in part, as abandoned property. There is, of course, a clear distinction in law between the loss of the possessory title to a mining claim by forfeiture, and its loss by abandonment; the one being occasioned after the lapse of the statutory period, by a failure to perform those acts by which mining claims are held, or to comply with the requirements of mining regulations, and is complete when some one enters with intent to relocate; and the other is occasioned by the voluntary act of relinquishing possession of the claim, with the intention not to return and occupy it, whereby the property forthwith reverts to its original status as a part of the public domain. While, in terms, the act requires that upon such relocation the notice shall state that it is located as abandoned property, yet it is clear from the reading of the whole act that, though the legislature has not carefully preserved the distinction, where the relocation is based upon the loss of the possessory title, whether by forfeiture or abandonment, the new location-notice should state the fact. But it does not require that where there has been an attempted prior location, even though that fact be known to the subsequent locator, he should therefore state in his notice of location that he locates the ground as abandoned property. It is only when such prior location is a valid location, that the subsequent location-notice should contain such a statement. If a claim be relocated as a forfeited or abandoned claim, such relocation admits the validity of the prior location, and the issue then is, conceding such prior location, whether the prior locator has lost his right by forfeiture or by abandon-

[10] Omar v. Soper, 11 Colo. 380, 18 Pac. Rep. 443, 7 Am. St. Rep. 246, 15 Morr. Min. Rep. 196.

[11] For the full terms of this statute, see post, pt. II, ch. I.

ment; but, where a subsequent locator bases his right upon the contention that the prior locator never made a valid location under the law, then he is not relocating a forfeited or abandoned claim, but is making an original location of a claim, the prior attempted location of which is invalid. In such a case the issue is, not whether the prior locator has lost a possessory right once legally established, but whether the prior locator ever established a legal right. In such a case the statute referred to has no application, and it not only would not be proper for the new locator to state in his location-notice that he located the claim as abandoned property, but such statement, if made, would preclude him from contesting the question to be determined, namely, the validity of the prior location.[12] But even where the prior location is valid, the Arizona court has held that the legislature, in providing that the location-notice of a claim, located as an abandoned or forfeited claim, should be void unless it contained the required statement, intended to use the word "void," not in its restricted and pure meaning, but rather in the larger sense of voidable, and that, under the statute, such a location-notice, that is defective by reason of non-compliance with such requirement, may be amended by the filing of an amended notice containing the omission, provided rights of others have not intervened, and that such amended certificate will relate back to the date of the first location, and will cure the defects of such prior location, except as to any intervening or pre-existing rights of others; the effect of the statute and of the filing of such amended location-notice being to operate to cure the defect and omission of the former location-notice, and to put the locator, if no rights of others have intervened, in the same position as he would have been if the former defect had not existed; but where others in the mean time have initiated or maintained rights to the claim, such attempt to so cure the defect will be unavailing.[13]

The above-mentioned Arizona statute was amended in

[12] Cunningham v. Pirrung (Ariz., 1905), 80 Pac. Rep. 329. See also Score v. Griffin (Ariz., 1905), 80 Pac. Rep. 331.

[13] Kinney v. Lundy (Ariz., 1907), 89 Pac. Rep. 897.

1907.[13a] And as amended, the foregoing provisions, requiring the relocator to state that he locates the claim as abandoned property, has been eliminated.[13b]

§ 199. **New discovery not necessary.** No new discovery is necessary to a valid relocation.[14]

§ 200. **By whom relocation may be made.** Any person qualified to make an original location may make a relocation, and this, of course, gives to the original locator himself the right to relocate.[15]

A stockholder in a corporation, which is the owner, in whole or in part, of a mining claim, has, in himself, no title in or to the claim, separate and distinct from that of the corporation, and hence is not a co-owner with the corporation, or the other stockholders therein, or with any other part-owners of the claim, and is not qualified to take advantage of the forfeiture provisions of the Federal statute.[16]

§ 201. **Same. By agent of original locator.** But the agent of the original locator cannot secretly, and in hostility to his principal, relocate the claim for his own benefit,[17] at least so long as the relation of principal and agent exists.[18]

§ 202. **Same. By co-owner.** It has been held that a co-owner cannot relocate a mining claim, where the annual assessment-work has not been done, and thereby obtain title as against his cotenants.[19] As was said by the court so holding, "We think the circuit court should have adjudged

[13a] Session Laws Ariz. 1907, p. 27.

[13b] This amended statute is set out in full in Part II of this work.

[14] Armstrong v. Lower, 6 Colo. 393, 15 Morr. Min. Rep. 631.

[15] Richards v. Wolfling, 98 Cal. 195, 32 Pac. Rep. 971; Warnock v. De Witt, 11 Utah 324, 40 Pac. Rep. 205.

[16] Repeater and Other Lode Claims, 35 Land Dec. 54.

[17] Haws v. Victoria Copper Min. Co., 160 U. S. 303, bk. 40 L. ed. 436, 16 Sup. Ct. Rep. 282.

[18] Page v. Summers, 70 Cal. 121, 12 Pac. Rep. 120, 15 Morr. Min. Rep. 617.

[19] Speed v. McCarthy, 181 U. S. 269, bk. 45 L. ed. 855, 21 Sup. Ct. Rep. 613; s. c. 11 S. D. 362, 12 S. D. 7, 80 N. W. Rep. 135, 20 Morr. Min. Rep. 124.

the defendants to be trustees, and have enforced the trust. This conclusion is not precluded by the language of the Federal statutes. They provide that upon a failure to comply 'with required conditions as to labor or improvements the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made.' It is contended that if Congress intended to have the relocator regarded as a trustee under any circumstances, such intention would have been expressed in the statute. The contention is not tenable. The trust results from the fiduciary relation of the parties, and not from the operation of the statute."

§ 203. **Same. By lessee.** Where a lessee is, by the express terms of a lease, required to do an amount of work in the development of a mine, sufficient to fulfil the legal requirements, for the protection of his lessor, and to notify his lessor, in writing, of any purpose on his part to abandon the tenancy, he cannot, upon failure to perform his obligations, secretly relocate the claim and thereby secure and hold for himself the title thereto. A patent obtained under such circumstances will be decreed to be held in trust for the lessor.[20]

§ 204. **From what time relocation dates.** If ground once included within the boundaries of a lode mining claim be abandoned, and a new location made thereon as abandoned ground, such location dates only from the time it is relocated as abandoned ground, and does not relate back to or obtain any rights from the abandoned location. The law makes a distinction between a relocation and an amended location certificate, although both be designated as amendments in the certificates.[21] But it has been held that the owners of a mining claim may relocate the same under another name, and include therein additional unappropriated ground, without losing any rights acquired by the

[20] Stewart v. Westlake (C. C. A.), 148 Fed. Rep. 349 (decided Oct. 6, 1906).

[21] Cheesman v. Shreeve, 40 Fed. Rep. 787, 17 Morr. Min. Rep. 260.

prior location, and may convey such claim by the later name.[22]

§ 205. When improvements pass by relocation. Improvements which have become attached to and are a part of the realty pass to the relocator.[23] But in the case of personal property, which does not attach to the soil, the United States has no interest therein which can be passed with the patent.[24]

§ 206. Improvements by prior locator not available to relocator as assessment. Improvements upon an abandoned location, made by a prior locator, cannot be credited to the later location embracing the same ground.[25]

[22] Shoshone Min. Co. v. Rutter, 87 Fed. Rep. 801, 805, 31 C. C. A. 223, 19 Morr. Min. Rep. 350.

[23] Deffeback v. Hawke, 115 U. S. 392, bk. 29 L. ed. 423, 427, 6 Sup. Ct. Rep. 95; Collins v. Bartlett, 44 Cal. 371, 383; McKiernan v. Hesse, 51 Cal. 594, 595.

[24] Pennybecker v. McDougal, 46 Cal. 661, holding that a cabin set on blocks on the surface of the ground had not attached to the soil. And see Sands v. Pfeiffer, 10 Cal. 258; Tyler v. Decker, 10 Cal. 435; Merritt v. Judd, 14 Cal. 59, 6 Morr. Min. Rep. 62.

[25] Russell v. Wilson Creek Consol. M. & M. Co., 30 Land Dec. 332; In re Yankee Lode Claim, 30 Land Dec. 289.

CHAPTER XX.

PROCEEDINGS TO OBTAIN PATENT.

§ 207. Who may make application.
§ 208. Survey of the claim. Employment of surveyor.
§ 209. Same. Application for order for survey.
§ 210. Same. Signature to application.
§ 211. Same. Deposit for land-office fees.
§ 212. Same. Order for survey.
§ 213. Same. The actual survey.
§ 214. Same. Nature of improvements.
§ 215. Same. Approval of survey.
§ 216. Same. Certificate of surveyor-general.
§ 217. Posting notice and plat.
§ 218. The application for patent.
§ 219. Same. Abstract of title.
§ 220. Same. Publisher's agreement and publication.
§ 221. Same. Contents of notices.
§ 222. Same. Designation of newspaper.
§ 223. Same. Proof of citizenship.
§ 224. Same. Certificate of improvements.
§ 225. Same. Ground embraced in application.
§ 226. Same. Claim in two land districts.
§ 227. Same. Delay in prosecuting application.
§ 228. Application to purchase. Final entry.
§ 229. Same. Register's certificates.
§ 230. Proceedings for placer patents.
§ 231. Same. Number of locations unlimited.
§ 232. Same. Entry for single location must not exceed one hundred and sixty acres.
§ 233. Same. May embrace both placer and lode.
§ 234. Same. Included lodes.
§ 235. Same. Excluded lodes.
§ 236. Surveys and boundaries.
§ 237. Same. Notice of application.
§ 238. Mill sites.
§ 239. Group of claims. Improvements.
§ 240. Applicant deceased. Heirs.
§ 241. Affidavits.
§ 242. Same. Where to be made.
§ 243. Same. Cannot be filed nunc pro tunc.

§ 244. Coal-lands.
§ 245. Saline-lands.
§ 246. Jurisdiction of the land department.
§ 247. Conclusiveness of decision by the department.

§ 207. Who may make application. An application for patent to public lands claimed and located for valuable mineral deposits can be filed only by a person, association, or corporation, otherwise authorized, who has, or have, claimed and located pieces of land for such purpose and complied with the terms of the mining laws in other respects, or by the grantee or grantees of such locator or locators. Accordingly, where a mineral patent is sought to be secured by an association of two persons, their authority for making application therefor is expressly dependent upon conditions precedent; among others, that they, or their mediate or immediate grantors, have claimed and located the land in question; in other words, the right to possession, whether by location or purchase, must be in all the members of an association, to authorize them, under the law, to prosecute proceedings to acquire legal title. Each member of the association must own an interest in the claim, or in each claim of the group embraced in their joint application for patent. And "an interest in the group," within the purview of the law, permits application for patent to claims in common, meaning an interest in each claim composing the group.[1]

Patent may issue on the application of a company, though the location be made by an individual in whom possessory right apparently remains, where it is shown that in fact the location was made for and in behalf of the company.[2]

§ 208. Survey of the claim. Employment of surveyor. The first step to be taken by the holder of the possessory right to a lode mining claim, in order to obtain a patent, is to employ a United States deputy mineral surveyor, of the

[1] Golden Crown Lode Mine, 32 Land Dec. 217; Bunker Hill Min. and Con. Co. v. Shoshone Min. Co., 33 Land Dec. 142.
[2] Sold Again Fraction Mining Lode, 20 Land Dec. 58.

mining district where the claim is located, and make satisfactory arrangements with him as to the compensation which he shall receive for his services in making a survey of the claim. This is wholly a matter of contract between the deputy surveyor and the claimant. This contract should also include the matter of compensation to necessary assistants of the deputy surveyor. The United States cannot be held responsible for any of these expenses.[3]

§ 209. **Same. Application for order for survey.** The claimant then makes a written application to the surveyor-general for an order for a survey of his claim. This application should contain the name of the claimant in full, as he desires it to appear in the application for patent; the name of every location embraced in the claim; the name of the land and mining districts in which the claim is located; the name of the United States deputy mineral surveyor who is engaged to make the survey. The application should be signed by the claimant, or his agent or attorney, and state his post-office address. This application must be transmitted to the surveyor-general, together with a copy of the record of location of the claim, properly certified by the recorder of the county or mining district where the claim is located.[4] The appointment of non-resident deputy mineral surveyors is a matter in which the discretion of the surveyor-general may be properly recognized.[5]

§ 210. **Same. Signature to application.** The signature must be that of the claimant, his agent, or his attorney. A typewritten name is not sufficient.[6]

§ 211. **Same. Deposit for land-office fees.** Before making his application for a survey, the applicant should obtain from the surveyor-general's office the schedule of rates

[3] U. S. Rev. Stats., § 2325; 5 Fed. Stats. Ann., p. 31; Rules 34, 90, 120, 121, 127; Circular to Applicants, post, pt. II, ch. I.
[4] Circular to Applicants, see post, pt. II, ch. VI.
[5] 21 Land Dec. 379.
[6] Tipton Gold Min. Co., 29 Land Dec. 718.

which he has fixed for platting and other office-work, and an estimate of what it will cost in his case, and he must deposit the amount of the estimate to the credit of the treasurer of the United States, in a designated United States depository, or with any assistant United States treasurer, and immediately forward the original receipt therefor to the Secretary of the Treasury, and inclose one duplicate receipt with his application for order of survey, and keep one duplicate receipt for his own use.[7] If the estimate of the surveyor-general for platting and other office-work is excessive, the applicant may appeal to the general land-office.[8] In case the office-work should amount to more than the estimate, or if an amended order is necessary, an additional deposit must be made.[9] If for any reason the survey should not be made, and a portion of the deposit should remain unexpended, it will not be refunded, but may be applied on a new survey.[10]

§ 212. **Same. Order for survey.** Upon receiving these papers, the surveyor-general issues and transmits to the deputy surveyor named in the application, an order for survey, with a copy of the location-certificate prepared in his office from the certified copy of the claimant.

§ 213. **Same. The actual survey.** When the United States deputy mineral surveyor receives an order for survey, he is required personally to make an actual survey of the claim, on the ground, mark its boundaries, and return a plat and field-notes thereof to the office of the surveyor-general without delay. Great care should be taken to make such survey in strict accordance with the rules of the United States land-office, particularly rules thirty-eight, ninety-three, one hundred and nine, one hundred and ten, one hundred and twenty-six, and one hundred and

[7] Rule 91, pt. II, ch. V; Circular to Applicants, post, Rule 8, pt. II, ch. VI.

[8] Circular to Applicants, post, pt. II, ch. VI.

[9] Circular to Applicants, post, pt. II, ch. VI.

[10] Circular to Applicants, post, pt. II ch. VI; Elijah M. Dunphy, 8 Land Dec. 102.

twenty-nine to one hundred and sixty-nine, inclusive, in which are set forth specific instructions and directions for making such surveys.[11] The survey must be in accordance with the recorded notice of location as of record at the time when the order was issued authorizing such survey.[12]

In the survey of a mineral claim, a connecting line run to a section corner on a township line is sufficient, though such township may not be subdivided.[13]

Where no connection is shown with a mineral monument, or corner of the public survey, an amended survey will be required, and the claimant will be notified to that effect.[14]

Where the field-notes and the plat of the survey, on their face, indicate a discrepancy between the land surveyed and the claim as staked out on the ground and described in the location, no patent can issue on such record, but a hearing may be allowed for explanation, and the submission of evidence to establish the facts.[15]

There is no limitation to the number of mineral locations which may be held by one person and included in a single survey.[16] But where more than one location is embraced in an application for a patent, the survey and plat must so exhibit the boundaries as to clearly define each location.[17]

When the deputy surveyor has executed the survey, he must return the field-notes and preliminary plat thereof, with his report, to the surveyor-general. This report should contain a certificate by the deputy surveyor of the value of the improvements and actual expenditures made by the claimant, or his grantors, for the development of the claim. He should specify in such certificate with particularity and full detail the character and extent of such improvements.[18]

[11] 31 Land Dec. 474-501. And see post, pt. II, ch. V.

[12] Rule 131; Lincoln Placer, 7 Land Dec. 81; Rose No. 1 and Rose No. 2 Lode Claims, 22 Land Dec. 83.

[13] John C. Hauck, 10 Land Dec. 391.

[14] Senator Mill Site, 7 Land Dec. 475.

[15] Emma Lode, 7 Land Dec. 169.

[16] Carson City Gold & S. Min. Co. v. North Star Min. Co., 73 Fed. Rep. 597, s. c. 83 Fed. Rep. 658, 19 Morr. Min. Rep. 118; Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. Rep. 657.

[17] Argillite Ornamental Stone Co., 29 Land Dec. 585.

[18] Rules 151, 156, 157, post, pt. II, ch. V.

The report should also contain a list of the persons who assisted the deputy surveyor in making the survey, with their affidavits to the correctness of it.

The deputy surveyor must then forward the field-notes, plat, and report, verified by his own affidavit, to the surveyor-general.[19]

§ 214. **Same. Nature of improvements.** Improvements outside the surface boundaries may be considered, where it appears that such improvements were made to facilitate the extraction of ore from the claim, if they are not included in improvements on any other claim.[20] It should appear that the improvements have been made for the purpose of developing the particular claim applied for.[21]

What constitutes improvement. The erection of a stamp-mill upon a mining claim cannot be credited in acceptance of the statutory requirement as to the five hundred dollars' worth of work and improvement necessary as a condition precedent to obtain a patent.[22] Secretary of the Interior Garfield said: "A stamp-mill erected upon a mining claim may be of benefit to the owner of the claim, but it in no way directly facilitates the extraction of mineral therefrom, or contributes to its development as a mine. Whilst it may be of advantage to have a stamp-mill upon the claim, and thus save a long haul of the ore extracted therefrom, yet such a mill is not an active agency in the actual development of the mine; and the relation in that respect is precisely the same, whether the mill be situated upon the claim or at some distance therefrom. The only purpose which the mill can serve is in treating the mineral-bearing rock after it has been mined from the claim. A stamp-mill has no connection with the operation of extracting mineral from the ground, but its function begins only when the process of mining has ceased. The stamp-mill here assigned and

[19] Rule 93, post, pt. II, ch. V.

[20] Emily Lode, 6 Land Dec. 220; Alice Edith Lode, 6 Land Dec. 711.

[21] John Downs, 7 Land Dec. 71; Trickey Placer, 7 Land Dec. 52; Floyd v. Montgomery, 26 Land Dec. 122; Alameda Lode, 13 Land Dec. 146. See also Lawson Butte Cons. Copper Co., 34 Land Dec. 655.

[22] Monster Lode Min. Claim, 35 Land Dec. 495.

certified as an improvement upon the claim cannot, therefore, be accepted as coming within the meaning and intent of the statute." Under this line of reasoning, we do not see how a stamp-mill could be considered as a part of the annual labor required by the statute.

§ 215. **Same. Approval of survey.** If, upon examination by the surveyor-general, the plat and field-notes are found to be incorrect, they are returned to the deputy surveyor for correction; but if correct, he indorses his official approval upon the field-notes, and makes one copy of them, and four plats of the survey. One of these plats and the original field-notes are retained in his office. One of the plats is to be given the claimant for posting upon the claim; one plat and a copy of the field-notes are to be given the claimant for filing with the register of the proper land-office, to be finally transmitted by that office, with other papers in the case, to the general land-office, and one plat to be sent by the surveyor-general to the register of the proper land district, to be retained on his files for future reference.[23] Where the subdivison of a township is made by protraction and the areas estimated, the survey is effective as a public land survey, if done by the proper authority, and the approval of the plat of such survey, so made, is valid and binding upon all persons seeking to acquire title to such lands.[24]

§ 216. **Same. Certificate of surveyor-general.** Upon each of the four plats just mentioned, and upon the copy of the field-notes which is to be given to the claimant the surveyor-general should indorse his official certificate to the correctness of the plat, and the field-notes from which it was made, and as to the expenditures or improvements made by the claimant or his grantors, and the value thereof.[25]

[23] Rule 34, post, pt. II, ch. V.
[24] Wm. Laurents, 35 Land Dec. 303.
[25] Rules 48, 49, 50. And see post, pt. II, ch. V.

§ 217. Posting notice and plat. The claimant must then post in a conspicuous place on the claim a notice of his intention to apply for a patent, together with one of the plats of the survey furnished by the surveyor-general, and file with the register and receiver a copy of the plat and field-notes of the survey, being the same he received from the surveyor-general's office, together with the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting. A copy of the notice so posted is to be attached to and form a part of said affidavit. Very great care should be taken in the preparation of this notice.[26] There can be no valid entry upon an application for patent to a mining claim until notice of application shall have been given.[27]

It was formerly necessary to state in the posted notice the book and page of the record of the location on which the official survey was made, but this is no longer required, under rule thirty-nine.[28]

The notice of application should give the course and length of a line connecting the claim with the corner of the public surveys or with a mineral monument.[29]

An adjudication by the land department that the notice for an application for a patent to a mining claim is fatally defective, is equivalent to a determination that an entry based upon such an application is illegal and should be canceled. In such case the entry will be treated as though it had been formally canceled on the records at the time the notice was finally adjudicated to be insufficient.[30]

The provision of the Federal statute [31] requiring the applicant to file with his application the affidavit of at least two

[26] Rules 39, 40, pt. II, ch. V; Pratt v. Avery et al., 7 Land Dec. 554; Gowdy v. Kismet Gold Min. Co., 22 Land Dec. 624.

[27] Southern Cross Gold Min. Co. v. Sexton, 31 Land Dec. 415.

[28] Parsons v. Ellis (on review), 23 Land Dec. 504; Rule 39, post, pt. II, ch. V.

[29] Emperor Wilhelm Lode, 5 Land Dec. 685; Nil Desperandum Placer, 10 Land Dec. 198.

[30] Southern Cross Gold Min. Co. v. Sexton, 31 Land Dec. 415.

[31] U. S. Rev. Stats., § 2325; 5 Fed. Stats. Ann., p. 31; Rule 40, 31 Land Dec. 181, post, pt. II, ch. V.

persons that the official plat of the claim, together with the notice of the application, were posted on the ground previous to the filing of the application, is mandatory; and where such affidavit is not filed, all proceedings upon the application for patent are without authority of law.[32] In the case so holding, it appeared that the affidavit filed was that of two persons, stating that each was present on a given day (which was prior to the filing of the application for patent), "when the notice of the intention of the Karma Mining Company to apply for a patent for the Karma mine was posted in a conspicuous place upon said mining claim, to wit, upon Karma shaft-house, where the same could be easily seen and examined, a copy of the notice so conspicuously posted upon said Karma mine being attached hereto, and marked Exhibit 'A.'" The affidavit contained no statement that the plat was posted, nor did it in any manner mention or refer to such "plat." The department held that since the required affidavit was not filed prior to or with the application, the proceedings upon the application were without authority of law; that in the state of the record, the patent proceedings must fall; and that it was not material to inquire whether the plat and notice were actually posted as required or not.

§ 218. **The application for patent.** At or before the time when the application for patent is filed, the applicant must pay fees to the register and receiver for filing and acting upon the application. These fees are five dollars to each officer.

The application for a patent is a written sworn statement of the applicant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase), with the mining rules, regulations, and customs of the mining district, state, or territory in which the claim lies, and with the mining laws of Congress, narrating briefly, but as clearly as possible, the facts constituting such com-

[32] Mojave Min. & M. Co. v. Karma Min. Co., 34 Land Dec. 583.

pliance, the origin of his possession, and the basis of his claim to a patent.

§ 219. **Same. Abstract of title.** The application must be supported by a copy of the location-notice, certified by the officer in charge of the records where the same is recorded; and where the applicant for patent claims the interests of others associated with him in making the location, or only as purchaser, in addition to the copy of the location-notice there must be furnished a complete abstract of title brought down to the date of the application for patent, certified to by the proper officer. Where the claimant is sole locator of the claim, and does not furnish an abstract of title, he must make affidavit that he has disposed of no interest in the land located. In case the records have been lost or destroyed, secondary evidence consisting of affidavits of the claimants and other persons may be received.

To support an entry on a mineral location and the application for patent, the proofs must show that the full ownership of the claim in question is in the entryman.[33]

§ 220. **Same. Publisher's agreement and publication.** The claimant must furnish with the application for patent, and the abstract or affidavit of possessory title above mentioned, the written agreement of the publisher of the newspaper in which claimant's notice of application for patent is to be published, that he will hold the applicant for patent alone responsible for charges of publication. These papers should be filed with the register and receiver by the claimant when he files the field-notes and plat of survey. If no reason then appears for rejecting the application, the register will, at the expense of the claimant, publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, nine consecutive insertions are necessary; when in a daily news-

[33] Repeater and Other Lode Claims, 35 Land Dec. 54.

paper, the notice must appear in each issue for sixty-one consecutive issues. In both cases, the first day of issue must be excluded in estimating the period of sixty days.[34]

§ 221. Same. Contents of notices. The notices so published and posted must embrace all the data given in the notice posted upon the claim, and, in addition, the published notice must further indicate the locus of the claim, by giving the connecting line, as shown by the field-notes and plat, between a corner of the claim and a United States mineral monument, or a corner of the public survey, and thence the boundaries of the claim by courses and distances. The register designates the newspaper.[35] The notice of an application for patent to a mining claim published in a newspaper, as required by law, should conform substantially to the notice posted upon the claim, and should contain sufficient correct data to put persons of ordinary intelligence and prudence, interested in the land applied for, upon inquiry, and to enable any one interested to ascertain with accuracy the position of the claim.[36]

Where a location is on unsurveyed land, and connected by course and distance with a mineral monument, such connection must be shown in the published notice of application for patent.[37]

In determining whether or not the published notice is in accordance with the statute, and mining regulations made in pursuance thereof, the notice must be taken as a whole, and if, when so taken, it does not appear to contain the correct data previously stated, it fails to comply with the requirements of the statute and mining regulations.[38]

The notices required to be given of an application for a patent are, in effect, a summons to all adverse claimants.

[34] Rules 41, 42, 43, 45, 95, post, pt. II, ch. V; Great Western Lode Claim, 5 Land Dec. 510; American Flag Lode, 6 Land Dec. 320.

[35] Rules 46, 47; Bretlef v. Swift, 16 Land Dec. 178; Condon v. Mammoth Min. Co., 15 Land Dec. 330; Instructions, 26 Land Dec. 145.

[36] Reed v. Bowron, 32 Land Dec. 383; Hoffman v. Venard, 14 Land Dec. 15.

[37] Broad Ax Lode, 22 Land Dec. 244. See also Eugene McCarthy, 14 Land Dec. 105; Whitman v. Haltenhoff, 19 Land Dec. 245; Wight v. Dubois, 21 Fed. Rep. 693.

[38] Tough Nut and Other Lode Claims, 32 Land Dec. 359.

The latter must assert their rights by filing an adverse claim within the sixty days' publication of notice of application for patent, as required by section two thousand three hundred and twenty-five. Unless filed within that period, it will be conclusively presumed that none exists.[39]

§ 222. **Same. Designation of newspaper.** The discretionary power lodged in the register by section two thousand three hundred and twenty-five to designate the newspaper in which notice of application for a patent to a mining claim shall be published, is subject to review by the commissioner of the general land-office and the Secretary of the Interior, and when it is found that there has been an abuse of his discretionary power, a new publication will be ordered.[40]

The publication of notice should be made in a newspaper of established character in the vicinity of the claim, which is nearest in point of accessibility — nearest over the most direct traversable route, and over which the editions of the newspaper are or may be transported by the usual and available means.[41]

§ 223. **Same. Proof of citizenship.** When the application for a patent is filed, the applicant should also file proofs of citizenship. The manner of making such proofs is distinctly set forth in rules sixty-six, sixty-seven, sixty-eight, sixty-nine, and seventy.

Proof of citizenship may, in the case of an individual, consist of his own affidavit thereof; in the case of persons associated, but unincorporated, by an affidavit made on his own knowledge or upon information and belief; in the case of a corporation organized under the laws of the United States or the laws of any state or territory, by filing a certified copy of the certificate of its incorporation.[42]

[39] Healey v. Rupp (Colo., 1906), 86 Pac. Rep. 1015.

[40] Tough Nut and Other Lode Claims, 32 Land Dec. 359. See also Northern Pac. R. Co., 32 Land Dec. 611.

[41] Pike's Peak and Other Lodes, 34 Land Dec. 281.

[42] U. S. Rev. Stats., § 2321; 5 Fed. Stats. Ann., p. 9. For cases where this statute has been construed and applied, see Hammer v.

The Federal statute, however, is not conclusive, and does not operate to prevent proof of citizenship by other competent evidence in the same mode as when that fact is at issue in other cases.[43]

A corporation is a resident subject or citizen of the state in which it is created.[44]

Where the applicant for a patent is a trustee, proof of citizenship of the beneficiaries is required.[45]

Where one of the associates is without an interest in any one or more of the claims embraced in the application, the proceedings had thereon are, to the extent of such claim or claims, without statutory authority, and a nullity.[46]

§ 224. **Same. Certificate of improvements.** The plat and field-notes furnished by the surveyor-general to the applicant, together with the surveyor-general's certificate of five hundred dollars' worth of improvements, should be filed with the application for patent in the local land-office. The certificate of improvements may, however, be filed at any time within the sixty days of publication.[47]

If improvements are made for the benefit of several claims, the surveyor-general's certificate should show what part of such expenses is exclusively credited to the claim for which patent is asked.[48]

The certificate of the surveyor-general is made, by statute, evidence of the sufficiency of work performed and improvements made on a mining claim. His estimate is open to

Garfield Min. & M. Co., 130 U. S. 291, bk. 32 L. ed. 964, 9 Sup. Ct. Rep. 548, 16 Morr. Min. Rep. 125; Thompson v. Spray, 72 Cal. 528, 14 Pac. Rep. 182; Doe v. Waterloo Min. Co., 70 Fed. Rep. 455, 17 C. C. A. 190, 18 Morr. Min. Rep. 265; North Noonday Min. Co. v. Orient Min. Co., 11 Fed. Rep. 125, 6 Sawy. C. C. 503, 9 Morr. Min. Rep. 524.

[43] Thompson v. Spray, 72 Cal. 528, 14 Pac. Rep. 182; Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120, Strickley v. Hill, 22 Utah 257, 62 Pac. Rep. 893, 83 Am. St. Rep. 786, 20 Morr. Min. Rep. 722.

[44] Louisville Gold M. Co. v. The Hayman Min. & T. Co., 33 Land Dec. 680.

[45] Capricorn Placer, 10 Land Dec. 641.

[46] Golden Crown Lode, 32 Land Dec. 217.

[47] Rule 48; Milton v. Lamb, 22 Land Dec. 339; White Cloud Copper Min. Co., 22 Land Dec. 252.

[48] Nil Desperandum Placer, 10 Land Dec. 198.

examination by the department before patent, but unless corrected by the department before patent, it is conclusive.[49]

§ 225. **Same. Ground embraced in application.** An application for patent to a lode mining claim may embrace ground lying on opposite sides of an intersecting patented mill site, providing the lode or vein upon which the location is based has been discovered on both parts of the lode claim. But it cannot be presumed, merely from the discovery of a lode or vein on one side of the mill site, especially in view of the fact that the mill site was patented as non-mineral ground, that the vein so discovered passes through the mill site and extends in the ground on the other side thereof.[50] The application may embrace more than one location.[51] A patent will not issue on an application which expressly excludes therefrom the lands upon which are situated the discovery-shaft and improvements, or where the proof fails to show the discovery of mineral on the ground claimed, or the requisite expenditure for the benefit thereof.[52] An application for a mineral patent should not be received where the land therein included is embraced in a pending application of a third person.[53]

"**Contiguous.**" Secretary of the Interior Garfield has said: "The word 'contiguous,' as applied in the disposition of the public lands, has a long-established and well-understood meaning. Tracts of land which merely corner on each other in pre-emption and homestead claims have always been held to be non-contiguous [citing several authorities]. In the land laws generally, parts of the public domain are not

[49] United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195.

[50] Paul Jones Lode, 31 Land Dec. 359, modifying 28 Land Dec. 120, where it had been held that an application for a lode patent could not embrace land lying within and beyond an intersecting patented mill site.

[51] Peabody Gold Min. Co. v. Gold Hill Min. Co., 97 Fed. Rep. 657; Carson City Gold & S. Min. Co. v. North Star Min. Co., 73 Fed. Rep. 597, s. c. 83 Fed. Rep. 658, 19 Morr. Min. Rep. 118; Tonopah and Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 408, 412.

[52] Lone Dane Lode, 10 Land Dec. 53. See also Antediluvian Lode and Mill Site, 8 Land Dec. 602.

[53] Stemmons v. Hess, 32 Land Dec. 220.

held to be contiguous unless they lie alongside, in whole or in part, so that together they form one body of land. 'Contiguous' means touching sides, adjoining, adjacent. Two tracts of land touching only at a point are not contiguous." The Honorable Secretary said, however, that in view of the fact as disclosed by informal inquiry, it has been the practice to allow entry and issue patents for lode claims held in common, and embraced in a single patent proceeding, where one or more of such claims touch others only at a corner, and that patents have frequently been issued in such cases; that, under the circumstances, and in recognition of the hardships which might be imposed upon those who, upon faith of the contrary practice heretofore more or less generally observed, may have prosecuted, or prepared to prosecute, patent proceedings in cases like the present, direction is given that of pending entries for lode claims held in common and embraced in a single patent proceeding, by sustaining the entry allowed in all cases where applications for patent to such claims have been filed prior to September 1, 1907, if the law in all its other essential respects has been complied with; and when defective, in that one or more of the claims merely corner on the other claims embraced in each application and entry. All other cases thus defective will be adjudicated according to the principles herein announced.[54]

Where a mining claim is divided into two parts by a piece of ground belonging to another, the locator must elect, in his application for a patent, to exclude from his application one of the separate pieces. He is only permitted to patent one portion. Where the local land-office permitted the applicant to enter two tracts as one claim, and issued the final receipt to the one seeking a patent, the department ultimately refused to issue a patent for such tracts, basing the refusal on the ground that two portions of a lode mining claim separated by a patented placer could not be included within one patent. The land-office gave the applicant the privilege to apply for patent upon either

[54] Hidden Treasure Con. Quartz Mine, 35 Land Dec. 483-488.

one of the segregated tracts. The claimant elected to retain the north end of his lode claim and received patent for said portion, and the department canceled the entry to that portion lying south of the placer-ground.[55]

§ 226. **Same. Claim in two land districts.** Proceedings for patent to a mining claim embracing land lying partly within one land district and partly within another, conducted wholly within one land district, and the allowance of entry thereon covering the entire claim, are in no wise effective as to the lands lying without such land district, and do not constitute substantial compliance with law as to such lands, within the meaning of sections two thousand four hundred and fifty and two thousand four hundred and fifty-seven of the Revised Statutes, such as would warrant conformation of the entry as its entirety under said sections.[56]

There is no authority in the mining laws for the issuance of two patents for the same mineral lands, the patent to one claimant to embrace only the surface-lands and the patent to another claimant to embrace only the veins or lodes beneath the surface; nor is it within the contemplation of the mining laws that vein or lode deposits may be claimed alone and patented independently of the surface-ground connected with and containing or overlying them.[57]

§ 227. **Same. Delay in prosecuting application.** Where an applicant for a patent to a mining claim, after the expiration of the period of publication of notice for application, voluntarily defers making entry until after the close of the calendar year in which the period of publication ends, his neglect, in the presence of alleged relocation of the claim after the termination of that year, is fatal to the entry.[58]

[55] Brown v. Gurney (U. S. Sup. Ct., decided 1907).

[56] Alaska Placer Claim, 34 Land Dec. 40.

[57] Lellie Lode Mining Claim, 31 Land Dec. 21; Traphagen v. Kirk, 30 Mont. 562, 77 Pac. Rep. 58.

[58] Cleveland v. Eureka No. 1 Gold M. & M. Co., 31 Land Dec. 69.

The length of interval of time between the end of the period of publication, or the finality of pending adverse proceedings in court, or contest proceedings in the land department, and the date of entry is immaterial, so long as entry is made before the close of the then current calendar year; and the principle with respect to the completion of the patent proceedings is the same, whether the time remaining to the applicant in which to make entry, as aforesaid, be only a day or several months. And if he fails to make entry within the calendar year in which such period of publication ends, his title or interest remains throughout that year purely possessory in character, and with equal liability to forfeiture by relocation as though no patent proceedings had been instituted,— except where entry is prevented by suit in court, based on an adverse entry filed during the period of publication, or a pending contest, or a contest in the land department,[59] dependent for its maintenance on continuance to the succeeding calendar year, and upon the prescribed annual expenditure.[60]

Where an application for patent to a mining claim is abandoned as to a tract of land included therein, or rights thereto obtained by earlier proceedings under the application have been waived by failure to duly prosecute the same to completion, the application should, as to that tract, be rejected.[61]

§ 228. **Application to purchase. Final entry.** After the sixty days' period of newspaper publication has expired, the applicant may make his application to purchase the claim. This is done by filing with the register a sworn statement from the office of publication that the notice of application for patent was published for the statutory period, giving the first and last day of such publication, and the applicant's own affidavit showing that the plat and notice remained conspicuously posted upon the claim during said sixty days' publication, giving the dates. If

[59] Marburg Lode Mining Claim, 30 Land Dec. 202.
[60] Lucky Find Placer Claim, 32 Land Dec. 200.
[61] Fox v. Mutual Min. & M. Co., 31 Land Dec. 59.

no adverse claim has been filed, the applicant will then pay for the land embraced in the claim, at the rate of five dollars for each acre, and five dollars for each fractional part of an acre, and take the receiver's receipt therefor. The applicant must also make and file with the register a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land-office, and, last of all, file a formal application to purchase.[62]

§ 229. **Same. Register's certificates.** Upon proof and payment being made by the applicant, it is the duty of the register to make his certificate, showing that the notice of application for a patent was posted conspicuously in his office, and remained so posted during the entire sixty-day period of publication of said notice;[63] after which, he makes his certificate of final entry, and transmits the papers in the case to the general land-office at Washington, D. C. If the proceedings have been regular, a patent is issued for the claim, and forwarded to the local land-office for the claimant.

§ 230. **Proceedings for placer patents.** Proceedings to obtain patents for placer claims are similar to those prescribed for lode claims, hereinbefore set forth. Careful attention to sections two thousand three hundred and twenty-nine to two thousand three hundred and thirty-three, inclusive, United States Revised Statutes, and to rules nineteen to thirty, inclusive, and rules fifty-eight, fifty-nine, and sixty, will enable the applicant for a placer patent to make such slight modifications as may be necessary.

Rules number twenty-two, twenty-three, and twenty-four were revised on November 16, 1905, and will be found in this volume, together with all the other rules of the land-office in relation to mining claims.[64]

[62] Rules 51, 52; Frederick A. Williams, 17 Land Dec. 282.
[63] Rule 45; Gowdy v. Kismet Gold Min. Co., 22 Land Dec. 624.
[64] See post, pt. II, ch. V.

The price of placer-ground is fixed at two dollars and fifty cents for each acre, and each fractional part of an acre.

§ 231. **Same. Number of locations unlimited.** There is no limitation as to the number of locations one person may hold, and have surveyed and patented, as one consolidated mining claim; and in procuring patents, he may have one for each separate location, and in making survey thereof, and application for patent, may so change the end lines as to make them parallel to each other; and the same result may be accomplished by a single patent. The right to a patent with the boundaries of the claim as defined by the survey and application is within the jurisdiction of the land department to determine.[65]

§ 232. **Same. Entry for single location must not exceed one hundred and sixty acres.** The rule of approximation permitted in entries under the homestead and other public land laws providing for the disposal of non-mineral lands has no application to locations and entries under the mining laws. And where a claimant, in his location of a placer claim, had included under the government survey an area of one hundred and sixty-five acres, the Secretary of the Interior[66] ruled that he must reduce his claim to not exceed one hundred and sixty acres, saying that the entryman was "required to eliminate from the Chicago claim the area in excess of one hundred and sixty acres, either by relinquishment of one of the tracts embraced therein, or by a survey of the claim." It will be noted that the application in this case embraced but a single location, and undoubtedly if the application had embraced the entire area of the claim under two or more locations, his application would have been entertained, since the rule is settled that

[65] St. Louis Smelt. & Ref. Co. v. Kemp, 104 U. S. 636, bk. 26 L. ed. 875, 11 Morr. Min. Rep. 673; Carson City Gold & S. Min. Co. v. North Star Min. Co., 73 Fed. Rep. 597, s. c. 83 Fed. Rep. 658, 19 Morr. Min. Rep. 118; Tucker v. Masser, 113 U. S. 203, bk. 28 L. ed. 979, 5 Sup. Ct. Rep. 420.

[66] Chicago Placer Claim, 34 Land Dec. 9, 10, 11.

there is no restriction as to the number of locations that may be embraced within one application, provided one single location does not exceed the limit and are all contiguous.

§ 233. Same. May embrace both placer and lode. A single application may embrace, and a single patent issue for, placer and lode claims, where the land involved lies in one body or piece, has been claimed or located for valuable deposits, and the several claims have a common ownership.[67] But where more than one claim is included in the application for a patent, the expenditure must be shown to equal five hundred dollars for each claim.[68]

§ 234. Same. Included lodes. Since there is no necessary connection between the placer and the vein, Congress has explicitly provided that in an application for a placer patent the applicant should include any known lode or vein of which he has possession, and that if he does not make such inclusion the omission of it will be taken as conclusive that he has no right of possession of such lode or vein. If, however, no lode or vein within the placer claim is known to exist, the patentee takes title to any lode or vein which may be subsequently discovered.[69]

§ 235. Same. Excluded lodes. The time when a vein or lode within the placer must be known, in order to be excepted from the grant of the placer patent, is the time when the application for the placer patent is made.[69a]

§ 236. Same. Surveys and boundaries. In applications for patents for placer claims, no survey is required as to ten-acre tracts of regular legal subdivisions, or of entire lots; but where it is sought to embrace only a portion of

[67] Mayflower Gold Min. Co., 29 Land Dec. 7.

[68] Secretary's Opinion, 27 Land Dec. 91.

[69] Clipper Min. Co. v. Eli Min. & L. Co., 194 U. S. 220, bk. 48 L. ed. 944, 24 Sup. Ct. Rep. 632.

[69a] Iron Silver M. Co. v. Mike & S. G. & S. M. Co., 143 U. S. 394, 36 L. ed. 201, 17 Morr. Min. Rep. 436, 12 Sup. Ct. Rep. 543.

such tract or lot, a survey of the same must be furnished, as in the case of unsurveyed lands.[70]

§ 237. Same. **Notice of application.** Misstatements in the published notice of an application for a placer patent, as to the mining district in which the land is situated, is not fatal to the notice, if the land is accurately described by legal subdivisions, and otherwise identified.[71]

Where the certificate of entry of a placer mining claim describes the land in the terms of the general public survey and the surveys of the excluded mining claims, such description is sufficiently accurate therein, and said surveys, taken together, furnish the necessary data for the computation of the area of the land, and for the preparation of an accurate description to be incorporated in the patent.[72]

Where an applicant for a placer patent has complied with all the proceedings essential to the issuance of a patent, and it appears that the ground has been surveyed and returned by the surveyor-general to the local land-office as mineral land, and no adverse claim has been filed or set up, the question as to the mineral character of the ground is not open to litigation by private parties.[73]

§ 238. **Mill sites.** The method of obtaining patent for a mill site is sufficiently explained in section two thousand three hundred and thirty-seven, United States Revised Statutes, and rules sixty-one to sixty-five, inclusive.[74]

§ 239. **Group of claims. Improvements.** Where more than one claim is included in the application for a patent, the expenditure must be shown to equal five hundred dollars for each claim.[75]

[70] Chicago Placer Min. Co., 34 Land Dec. 11; Reims v. Murray, 22 Land Dec. 409; Kern Oil Co. v. Crawford, 143 Cal. 298, 76 Pac. Rep. 1111.

[71] Adams v. Quijada, 25 Land Dec. 24.

[72] Mary Darling Placer Claim, 31 Land Dec. 64.

[73] Dahl v. Raunheim, 132 U. S. 260, bk. 33 L. ed. 324, 10 Sup. Ct. Rep. 74, 16 Morr. Min. Rep. 214. See also Dahl v. Montana Copper Co., 132 U. S. 264, bk. 33 L. ed. 325, 10 Sup. Ct. Rep. 97.

[74] 31 Land Dec. 485; and post, pt. II, ch. V.

[75] Secretary's Opinion, 27 Land Dec. 91.

A certificate of the surveyor-general, showing statutory expenditure of five hundred dollars within the period of publication, may be accepted, though not filed until after the expiration of such period.[76]

§ 240. Applicant deceased. Heirs. A final certificate on a mineral entry should issue in the name of the heirs of the applicant, where it is known at the date of its issuance that he died prior to submission of final proof, and making payment for the land.[77]

§ 241. Affidavits. The mere fact that an application for patent to a mining claim, and the affidavit as to the posting of notice on the claim, executed by the duly authorized agent of the corporation, were verified before a notary public, who was also the secretary of the corporation, is not sufficient reason for requiring a new application and a new affidavit, unless the notary public was at the time also a stockholder, or otherwise beneficially interested in the corporation.[78]

§ 242. Same. Where to be made. Affidavits must be made within the land district, unless expressly excepted by statute or the rules. All oaths and affidavits in proceedings to obtain patents to mining claims and in all adverse proceedings pertaining to mineral applications, unless there is an expressed exception made under the statute and the rules of the Department, must be made by the applicant within the land district where the mining claims are situated. Our understanding of the decision of the Secretary of the Interior made in December, 1905, is, that at the time the affidavit is made the affiant and the official who is administering the oath must both be physically and personally and actually within the boundary lines of the land district where the mine, which it is sought to obtain a patent

[76] Nelson v. Champagne Min. & M. Co., 29 Land Dec. 491.
[77] Tripp v. Dunphy, 28 Land Dec. 14.
[78] Milford Metal Mines Investment Co., 35 Land Dec. 174.

to, or against which adverse proceedings are sought to be brought, is situated.

This, the latest ruling of the Department, overrules the old case of Corning v. Pell, decided in 1877,[78a] and a much later decision of the Department rendered in 1904, in the case of Lonergan v. Shockley,[79] wherein the Department held that where the jurisdiction of the officer administering the oath (in the case cited, a notary public) extends throughout the county, lying partly within and partly without a land district, the affidavits made before such officer without the land district, but within his jurisdiction, which would be, of course, in the same county, but in a portion of his county outside of the land district, were sufficient. We believe it has been very generally the practice for applicants to make oaths and affidavits before officials without the land district, but whose jurisdiction extended within the land district wherein the property was situated, but under this, the latest ruling of the Department, affidavits so made will be considered fatally defective. In arriving at its latest decision on this question, the Secretary has reviewed the question at much length, and specifically refers to the fact that it is overruling two cases hereinabove mentioned. The Secretary also holds that an affidavit made by telephone is not sufficient.

If the claimant or applicant resides beyond the limits of the district, the affidavit as to citizenship may be taken before the clerk of any court of record, or before any notary public of any state or territory. This is one case in which, so far as we know, oaths and affidavits may be made without the land district.

If the applicant is a non-resident, his authorized agent may make the affidavits within the land district.

It has been common practice for the publisher, in verifying his statement as to the publication of notice, to make this affidavit outside of the land district where the paper publishing the notice was the nearest to the mining property and designated by the register, but was published

[78a] Sickels' Mining Laws and Decisions, p. 308.
[79] 33 Land Dec. 238.

outside of the land district. But, as above stated, we know of no exception to the rule requiring these oaths to be made within the land district, except the affidavit of citizenship.[80]

§ 243. Same. Cannot be filed nunc pro tunc. The applicant for patent to Calm Placer Mining Claim verified his application for patent, his affidavit of posting a plat and notice, and the proof that such plat and notice had remained posted during the period of publication, the affidavit of expenditure, and the affidavit of fees and money paid, etc., before a notary public in Los Angeles County, which county was wholly without the land-office district in which the claim was situated. A protest was filed subsequent to the filing of all of said papers in the local land-office, calling the attention of the register and receiver to the fact that all of such affidavits had been made before such notary public. After the filing of such protest, and upon the motion of the applicant, the local officers permitted the applicant to file a new application for patent, and a new set of affidavits made before an officer within the land district. The local officers permitted such new application and affidavits to be filed as of the date when the original application and affidavits were filed, and, without waiting for final action on the protest, permitted the applicant to make entry of the mining claim in question. The applicant contended that, notwithstanding he had filed such additional affidavits, the original ones were sufficient, because made before a notary public in the state of California, and claiming that notaries in said state had jurisdiction all over the state. The commissioner of the general land-office confirmed the action of the register and receiver, but Secretary of the Interior Hitchcock, on motion for a rehearing, held that "the original application for patent and affidavit as to posting of the plat and notice having been verified

[80] U. S. Rev. Stats., § 2335; Mattes v. Treasury Tunnel, M. & R. Co. (on review), 34 Land Dec. 314.

before an officer evidently without authority to administer oaths within the land district where the claim is situated, are therefore invalid and of no effect. It follows that all proceedings based upon such application and affidavit are a nullity"; and ordered that the entry be canceled, which order was subsequently put into effect.

The Secretary also held and decided that in the state of California, at least, notaries public have no jurisdiction outside of the county for which they are appointed and in which they reside.

It will be observed that the effect of this decision is, that the officials of the land-office should not file these affidavits nunc pro tunc; and if they are filed, they are wholly insufficient and of no force or effect.[81]

§ 244. **Coal-lands.** By an order of Secretary of the Interior Garfield, dated April 12, 1907, all rules and regulations of the Department pertaining to the acquisitions and patenting of coal-lands in the states and territories and the district of Alaska were abrogated and a new set of rules and regulations promulgated.[81a] These rules, together with the statutes pertaining to this subject, will be found set out in full in Part II of this work. We believe that any one paying careful attention to these rules, and using the forms also found in Part II herein, will not have the slightest difficulty in locating and following the proceedings necessary to obtain patent to this class of mineral lands.[82]

§ 245. **Saline-lands.** In obtaining a patent for saline-lands,[83] the application for patent, and the application to purchase, must each contain a specified statement, under oath, by each person whose name appears therein, that he never has, either as an individual or as a member of an

[81] Frazier Borate Mining Co. v. Calm, decided March 17, 1905 (unreported).

[81a] 35 Land Dec. 665-684.

[82] Post, pt. II, ch. V.

[83] See Circular, par. 3; 31 Land Dec. 131; 5 Fed. Stats. Ann., p. 48; 31 Stats. at L., p. 745; 2 Comp. Stats. 1901, p. 1435.

association, located, applied for, entered, or held any other lands under the provisions of the act of January 31, 1901.

§ 246. Jurisdiction of the land department. Until patent has issued, the land department has jurisdiction to inquire and determine whether or not a claimant for land has complied with the laws, and if entry has been made, to inquire and determine whether or not it was properly allowed, and if found not to have been so allowed, it is the duty of the department to vacate and cancel the entry.[84]

The land department has jurisdiction to determine the equitable, as well as the legal, rights of parties claiming entries in public lands, as no other tribunals have jurisdiction, and it is the duty of the department to recognize equities such as courts recognize.[85]

It is within the jurisdiction and power, and it is also the duty, of the land department to inquire into and determine questions brought to its attention, touching the legality and validity of claims asserted under the public-land laws, at any time prior to the issuance of a patent. And the action of the local land-officers upon questions of law or fact respecting the disposal of public lands does not conclude their superior officers or the government.[86]

Evidence may not be taken before a commissioner outside of the land district. In the case of a protest filed against application for patent for the Bryan Borate Placer Mining Claim, the local land-officers designated the county clerk in the city of Ventura, California, as a commissioner before whom the evidence in the matter should be taken. The

[84] Reed v. Bowron, 32 Land Dec. 383; Bunker Hill etc. Co. v. Shoshone Min. Co., 33 Land Dec. 142.

[85] Aztec Land and Cattle Co. v. Tomlinson, 35 Land Dec. 163, citing Brown v. Hitchcock, 173 U. S. 473, bk. 43 L. ed. 772, 19 Sup. Ct. Rep. 485.

[86] F. A. Hyde & Co., 33 Land Dec. 639 (June, 1905); Kern Oil Co. v. Clarke, 31 Land Dec. 288, 302; Knight v. United Land As., 142 U. S. 161, bk. 35 L. ed. 974, 12 Sup. Ct. Rep. 258; Hawley v. Diller, 178 U. S. 476, bk. 44 L. ed. 1157, 20 Sup. Ct. Rep. 986; Cosmos Explor. Co. v. Gray Eagle Oil Co., 190 U. S. 301, 308, 312, bk. 47 L. ed. 1064, 23 Sup. Ct. Rep. 692, 24 Id. 860, affirming 112 Fed. Rep. 4, 21 Morr. Min. Rep. 633.

commissioner of the general land-office[87] held that the register and receiver had no authority to appoint any one to act as such commissioner to take the evidence outside of the land district where the mining claim was situated, and for that reason canceled the entire proceedings had pertaining to the taking of such evidence; the commissioner basing his decision upon rule thirty-five of practice and section two thousand three hundred and thirty-five of the Revised Statutes. In this particular case the mining claim was situated in the northern edge of Ventura County. The commissioner took the evidence at the county seat of said county, the county seat being outside of the land district.

§ 247. Conclusiveness of decision by the department. A final decision of the land department, in which a tract of land is held to be mineral in character, is conclusive only up to the period covered by the inquiry, and does not preclude a subsequent investigation as to the character of the land, where it is alleged that the mining claims thereon have been abandoned and that the land is agricultural as a present fact.[88] The findings of the land department as to a question of fact, or a mixed question of law and fact, on a matter properly before it, are conclusive on the courts.[89]

[87] Commissioner's Opinion, May 6, 1907.

[88] Dargin v. Koch, 20 Land Dec. 384.

[89] Jeffords v. Hine, 2 Ariz. 162, 11 Pac. Rep. 351, 15 Morr. Min. Rep. 575.

CHAPTER XXI.

PROTEST AND ADVERSE PROCEEDINGS.

§ 248. In general.
§ 249. Nature and purpose of protest.
§ 250. Same. Grounds for protest.
§ 251. Same. Standing of protestants.
§ 252. Same. Co-owners.
§ 253. Same. Sufficiency of affidavit.
§ 254. Nature and purpose of adverse claim.
§ 255. Who may adverse. Mill-site owner.
§ 256. Same. Placer claimant.
§ 257. Same. Tunnel-site owner.
§ 258. Same. Agricultural claimants.
§ 259. Same. Co-owners.
§ 260. Same. Heirs of claimant.
§ 261. Methods of settlement.
§ 262. When adverse claim must be filed.
§ 263. Same. Business hours.
§ 264. Same. Dormant application.
§ 265. Effect of failure to adverse.
§ 266. Same. No application to joint owner.
§ 267. Jurisdiction of courts. Generally.
§ 268. Same. State courts.
§ 269. Same. Subject-matter of jurisdiction.
§ 270. Same. Place.
§ 271. Same. Equity jurisdiction.
§ 272. Same. Removal from state to Federal court.
§ 273. Parties to adverse suits.
§ 274. Same. Heirs of deceased claimant.
§ 275. Commencement of adverse suit.
§ 276. Nature and form of action. Question involved.
§ 277. Same. Form determined by state practice.
§ 278. Same. Law or equity.
§ 279. Same. Pleadings and proofs.
§ 280. Same. Right to trial by jury.
§ 281. Establishment of right or title. Title of each party in question.
§ 282. Same. Priority.
§ 283. Same. Title in neither party.
§ 284. Same. Indian reservation.

§ 285. Reasonable diligence in prosecution. No exception to rule.
§ 286. Judgment. Ground affected.
§ 287. Same. Findings by court.
§ 288. Same. Effect of judgment.
§ 289. Proceedings after judgment.
§ 290. Adverse claim must be verified within the land district.
§ 291. Dismissal of adverse proceedings.
§ 292. Adverse claimant's application.
§ 293. Conclusiveness of findings by state court.

§ 248. **In general.** An application for a patent to a mining claim may be defeated by a successful protest, or by successful adverse proceedings.

§ 249. **Nature and purpose of protest.** A protest is a sworn statement setting forth that the applicant has failed to comply with the law in a matter that would avoid the claim. It may be filed in the land-office at any time before the issuance of the patent, and must be supported or corroborated by the affidavit of at least one witness. But where the facts as charged in the protest, if true, are a matter of record, the officers of the land department may take judicial notice thereof, and the verification or corroboration of the protest is not a prerequisite to its recognition as a proper basis for inquiry. A protest cannot be used for the purpose of determining the prior right to a mining claim, but only for the purpose of preventing the issuance of a patent as applied for by the applicant.[1] If a protest be sustained, and the effect of the ruling is to require the applicant to republish his notice of application, this opens the way for an adverse claim to be filed by the protestant, or any other person who may have prior or conflicting rights to the claim.

The Federal mining statutes provide that at the expiration of the sixty days of publication, if no adverse claim shall have been filed, no objection from third parties to the

[1] Rule 53, post, pt. II, ch. V; Burnside v. O'Connor, 30 Land Dec. 67; American Consol. Min. & M. Co. v. De Witt, 26 Land Dec. 580; Hughes v. Oehsner, 27 Land Dec. 396; Mutual Min. & M. Co. v. Currency Co., 27 Land Dec. 191; Tillis v. Downey, 29 Land Dec. 139; Floyd v. Montgomery, 26 Land Dec. 122.

issuance of a patent shall thereafter be heard, except it be shown that the applicant has failed to comply with the terms of such statutes. It is the last clause of this section which furnishes the statutory authority for filing protests against applications for patents to mining claims. This clause gives the right to anybody to come in and enter his protest or objection to the issuance of a patent to a mining claim, on the ground that the applicant for a patent has not complied with the terms of the statute, and to insist that there shall be an investigation of the matter by the officers of the land-office. A protest does not bring the protestant into court for the assertion of his own rights, but if the protest is sustained, the applicant for a patent will have to commence new proceedings, and then the protestant may be able to assert his rights by an adverse claim, and subsequent proceedings thereon.[2]

A protestant cannot set up the prior right of a third party to defeat an application for a patent.[3]

§ 250. **Same. Grounds for protest.** Non-discovery of mineral, or a failure to comply with the law in the matter of statutory expenditure, or failure as to posting of plat and notice, or failure in publication as required by law, or failure as to any other substantial requirement of the statutes, may properly be set forth in a protest, and made the basis for a hearing in the land-office, when properly corroborated, and even without corroboration if the matters charged in the protest are of record in the land-office.

§ 251. **Same. Standing of protestants.** Protestants have no standing before the land department as litigants. They are merely allowed to contest the right of applicants for a patent. As was said by the court in the case of Wight v. Dubois,[4] A "protest is only to the officers of the govern-

[2] U. S. Rev. Stats., § 2325; 5 Fed. Stats. Ann., p. 31; Wight v. Dubois, 21 Fed. Rep. 693; Neilson v. Champagne Min. & M. Co., 119 Fed. Rep. 123, 55 C. C. A. 576, 22 Morr. Min. Rep. 438.

[3] Bradstreet v. Rehm, 21 Land Dec. 30.

[4] 21 Fed. Rep. 693.

ment, challenges only the applicant's claims, and in no manner brings up for consideration any claims of the protestant."[5]

The allegation of adverse ownership in a protest, where the protestant has not filed an adverse claim as provided by law, has no effect, except to give the protestant a status before the land department, under the rules of practice entitling him to an appeal, which is not allowed a protestant who alleges no surface conflict, or interest in the claim.[6]

§ 252. **Same. Co-owners.** A protest based on alleged co-ownership is not an adverse claim that requires the institution of judicial proceedings in a court of competent jurisdiction.[7]

§ 253. **Same. Sufficiency of affidavit.** A protest against proceeding with a mineral application does not warrant a hearing, where the allegation thereto, and the affidavit in corroboration thereof, rests on information and belief alone.[8]

§ 254. **Nature and purpose of adverse claim.** An adverse claim is a written statement setting forth that the claimant has possessory right or title to all, or a portion, of a mining claim, to which another person seeks a patent by application duly filed in the land-office of the district where the claim is situated. This statement must be verified by the oath of the claimant, his agent, or attorney in fact.

The oath must be taken within the district; and if the agent or attorney in fact verifies the claim, he must swear that he is such agent or attorney, and otherwise prove it. The adverse claim must show the nature, boundaries, and extent of such adverse claim; whether the claimant holds

[5] Wight v. Tabor, 2 Land Dec. 743; Gowdy v. Kismet Gold Min. Co., 22 Land Dec. 624.

[6] Opie v. Auburn Gold Min. & M. Co., 29 Land Dec. 230; Smuggler Min. Co. v. Trueworthy Lode Claim, 19 Land Dec. 356; Dotson v. Arnold, 8 Land Dec. 439.

[7] Thomas v. Elling, 25 Land Dec. 495.

[8] Mitchell v. Brovo, 27 Land Dec. 40.

as locator or purchaser, giving particular facts constituting his possessory right or title, with proof thereof by abstract of title, or affidavit of witnesses if he be purchaser, and by certified copy of location if he holds as locator. Within the sixty days' publication of notice of application for patent, adverse claimant must file in local land-office adverse claim, with plat of conflict, as provided in rule eighty-two.

Adverse claim is appropriate recourse of claimant under a possessory title only, against application for patent to mining claim subject to appropriation under mining laws.[9]

Federal statutes provide for filing of adverse claim on oath of party, showing its nature, boundaries, and extent, which must be filed during sixty-day period of publication of notice of application for patent.

Upon filing adverse claim within time fixed, both parties must be notified, in writing, of fact, and of necessary future steps in matter, by register or receiver, and all proceedings on application for patent will be suspended, with exception of completion of publication and posting of notices and plat, and filing of proof thereof, until controversy shall have been adjudicated, or adverse claim waived or withdrawn.[10]

Protest filed as basis of adverse proceedings, which clearly and definitely notifies mineral applicant of nature, boundaries, and extent of alleged adverse right, meets requirements of statute as to showing required in local office on part of adverse claimant, even though it may not meet all requirements of mining regulations.[11] Adverse claim must show conflict of surface.[12] Where application for patent is made at time when it is impossible to secure survey of claim adverse thereto, on account of deep snow, adverse claimant may show nature, boundaries, and extent of his adverse claim as nearly as practicable from information within reach, and present, under oath, his reasons for not following more clearly regulations of land-office.[13] If protest does not present claim

[9] Sinnott v. Jewett, 33 Land Dec. 91.

[10] Rules 83, 84, post, pt. II, ch. V; Iba v. Central As. of Wyoming, 5 Wyo. 355, 40 Pac. Rep. 527, 42 Id. 20.

[11] McFadden v. Mountain View Min. & M. Co., 27 Land Dec. 358.

[12] New York Hill Co. v. Rocky Bar Co., 6 Land Dec. 318.

[13] Hoffman v. Beecher, 12 Mont. 489, 31 Pac. Rep. 92, 17 Morr. Min. Rep. 503.

contemplated by statute, it should not be treated as an adverse, and fact that suit thereon has been commenced in the courts will not require land department to recognize claim as an adverse, within meaning of law.[14]

Prime purpose of adverse suit is to determine, for information of officers of land-office, which, if either, of parties thereto is entitled to be vested with fee of premises in dispute by purchase from government. So far as adverse claimant is concerned, it must follow that his rights to premises in controversy must be limited to those existing at time of filing his adverse. If he had no claim then, he will not be heard to assert right to premises in dispute by virtue of one brought into existence thereafter; otherwise he would be permitted to assert title to disputed premises by virtue of rights other than those upon which his adverse is based.[15]

§ 255. **Who may adverse. Mill-site owner.** A mill-site claim, partly or wholly embraced in an application for a patent for a mine, can be protected only by an adverse claim filed in the usual manner and time.[16]

[14] Thomas v. Elling, 25 Land Dec. 495.

[15] Healey v. Rupp (Colo., 1906), 86 Pac. Rep. 1015.

[16] Warren Mill Site v. Copper Prince, 1 Land Dec. 555; Bay State Gold Min. Co. v. Trevillion, 10 Land Dec. 194.

Since § 255 was in type, Assistant Secretary of the Interior Woodruff handed down a decision overruling the former decisions of the Department of the Interior upon the question as to whether or not it is necessary for the owner of a mill site to adverse the application for patent for a mining claim, or whether the rights of the party could be determined by protest. The substance of this last decision of the Assistant Secretary is to the following effect: That §§ 2325 and 2326 of the Revised Statutes do not require adverse proceedings by a mill-site claimant in order to protect his rights as against an applicant for patent to a mining claim; but by protest in the land department he can litigate all material matters relating to the ownership and validity of his claim as against the mineral applicant. The department mentions that it has not been advised that the supreme court of the United States has passed upon this precise question, but refers to the language of that court, where a tunnel site was involved, in the case of Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266, where the court held "that whatever may be the propriety or advantage of an adverse suit, one cannot be adjudged necessary when Congress has not specifically required it. . . . Adverse proceedings are called for only when one mineral claimant contests the right of another mineral claimant": Helena etc. Co. v. Dailey, 36 Land Dec. 144.

§ 256. **Same. Placer claimant.** A placer claimant may adverse an application for a patent to a lode claim.[17]

§ 257. **Same. Tunnel-site owner.** A tunnel site is not a mining claim. The owner of a tunnel site, in order to protect his rights, is not required to adverse the application for patent to a mining claim, before a lode has been discovered in the tunnel. If, however, he has discovered the lode or vein in his tunnel, he must, where a lode claimant applies for a patent to a location containing the vein or lode which the tunnel-site owner has discovered, adverse the application of the lode claimant, in order to protect his rights based on discovery of the lode in his tunnel.[18] But the right of a tunnel-owner to the veins he discovers in the tunnel is not impaired or destroyed by his failure to adverse a previous application for a surface patent before the discovery of the veins.[19]

§ 258. **Same. Agricultural claimants.** The adverse proceedings provided for in the Federal mining laws contemplate only suits between adverse mineral claimants, and do not have in view adjudications respecting the character of the land as between agricultural and mineral claimants.[20]

§ 259. **Same. Co-owners.** The co-owner of a mining claim need not adverse the issuance of a patent to his co-owner, in order to protect his rights; he may establish and enforce a trust after the claim is patented.[21]

§ 260. **Same. Heirs of claimant.** In case of the death of an adverse claimant, his rights descend to his heirs, and

[17] Clipper Min. Co. v. Eli Min. & L. Co., 194 U. S. 220, 223, bk. 48 L. ed. 944, 24 Sup. Ct. Rep. 632, 33 Land Dec. 660.

[18] Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266.

[19] Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co., 167 U. S. 108, bk. 42 L. ed. 96, 17 Sup. Ct. Rep. 762, 18 Morr. Min. Rep. 661, affirming 32 U. S. App. 75, 66 Fed. Rep. 200, 13 C. C. A. 390.

[20] Powell v. Ferguson, 23 Land Dec. 173.

[21] Turner v. Sawyer, 150 U. S. 578, bk. 37 L. ed. 1189, 14 Sup. Ct. Rep. 192, 17 Morr. Min. Rep. 683; Stevens v. Grand Central Min. Co., 133 Fed. Rep. 28, 67 C. C. A. 284; Thomas v. Elling, 25 Land Dec. 495.

they can proceed with the adverse claim. The administrator of the deceased claimant cannot do so.[22]

§ 261. **Methods of settlement.** When an application for patent is adversed, the applicant may either litigate with the adverse claimant, or relinquish the ground in conflict and take a patent for the remainder, or dismiss his application for patent and rely on his possessory title.[23] Where an application to enter a mining claim is made, and embraced therein are lands claimed by another, the latter need not necessarily file an adverse claim, but he may make any valid settlement by which he can acquire any interest in the ground when thereafter patented by the applicant, and such contract will be enforced in an appropriate proceeding instituted for that purpose.[24]

§ 262. **When adverse claim must be filed.** The adverse claim must be filed within the sixty-day period of publication of notice of application for patent, in order to support adverse proceedings.[25] An adverse claim, to avail anything, must be filed in the land-office within sixty days from the first publication of notice, notwithstanding the notice is not complete until the expiration of sixty-three days. A suit begun to sustain an adverse claim, filed after the expiration of the sixty days, cannot be maintained, nor can any rights be determined thereby.[26]

§ 263. **Same. Business hours.** Local officers may lawfully refuse to receive and file an adverse claim out of business hours, on the sixtieth day of publication; but if it be accepted and filed, it is regarded as filed in time.[27]

[22] Keeler v. Trueman, 15 Colo. 143, 25 Pac. Rep. 311.

[23] Branagan v. Dulaney, 2 Land Dec. 744.

[24] St. Louis Min. & M. Co. v. Montana Min. Co., 171 U. S. 650, bk. 43 L. ed. 320, 19 Sup. Ct. Rep. 61.

[25] U. S. Rev. Stats., § 2326; 5 Fed. Stats. Ann., p. 35; Rule 83, post, pt. II, ch. V; Hunt v. Eureka Gulch Min. Co., 14 Colo. 451, 24 Pac. Rep. 550, 17 Morr. Min. Rep. 340.

[26] Hunt v. Eureka Gulch Min. Co., 14 Colo. 451, 24 Pac. Rep. 550, 17 Morr. Min. Rep. 340.

[27] Giroux v. Scheurman, 23 Land Dec. 546.

§ 264. **Same. Dormant application.** It was held in the case of Gillis v. Downey[28] that the sixty-day limit within which adverse claims to mining property may be filed in a land-office wherein application for patents are made, as provided by section two thousand three hundred and twenty-five of the United States Revised Statutes, does not apply in a case where such adverse right did not accrue until after the expiration of the sixty days, and the applicant for patent has let such application lie dormant for a number of years, without either paying the government for the land, or doing the required assessment-work each year, pending his application.

Holiday. If the last day of publication falls upon a legal holiday, the adverse claim may be properly filed upon the next business day.[29] So, too, if the last day of publication comes on Sunday, an adverse claim filed on the succeeding Monday is in time.[30]

Time. Appeal. In computing the time within which an adverse claim must be filed, the first day of publication should be excluded.[31] An appeal will lie from the rejection of an adverse claim.[32]

§ 265. **Effect of failure to adverse.** By failing to file an adverse claim in a proceeding to obtain a patent by a junior locator, a senior locator waives all right of priority to the ground in conflict between the two locations.[33] If an adverse claim is not filed during the period of publication, or suit is not brought as required by law, the jurisdiction of the courts does not attach.[34] In proceedings to obtain a patent

[28] 85 Fed. Rep. 483, 29 C. C. A. 286, 19 Morr. Min. Rep. 253.

[29] Waterhouse v. Scott, 13 Land Dec. 718. As to performance on succeeding business day, where last day on which act is to be performed falls on a holiday, see **Kerr's Cyc. Civ. Code Cal.**, § 11, note pars. 1-10; **Kerr's Cyc. Code Civ. Proc. Cal.**, § 13, note pars. 1-9.

[30] Ground Hog Claim v. Parole and Mining Star, 8 Land Dec. 430. See also authorities in preceding note.

[31] Waterhouse v. Scott, 13 Land Dec. 718.

[32] Bonesell v. McNider, 13 Land Dec. 286.

[33] Stranger Lode, 28 Land Dec. 321; Seymour v. Fisher, 16 Colo. 188, 27 Pac. Rep. 240.

[34] Nettie Lode v. Texas Lode, 14 Land Dec. 180.

to a mining claim, if no adverse claim is interposed, it will be assumed that no such claim exists, and that the applicant is entitled to a patent.[35]

Failure to commence proceedings upon an adverse claim in a court of competent jurisdiction within the period prescribed by section 2326 of the Revised Statutes constitutes a waiver of the adverse claim; and such proceedings thereafter begun and prosecuted cannot affect the rights of the applicant for patent.[35a]

§ 266. **Same. No application to joint owner.** The provisions of section two thousand three hundred and twenty-five, requiring parties having conflicting interests in mining claims to file adverse claims in the land-office upon the application of one claimant or locator, and upon failure to do so, be barred by the patent respecting such conflicting interests, has no application to the case of one joint locator of a mining claim, wrongfully or fraudulently procuring to be issued to himself a patent for such claim, to the exclusion of his joint locator.[36]

§ 267. **Jurisdiction of courts. Generally.** Adverse proceedings must be brought in courts of competent jurisdiction. What are competent courts is not specifically stated in the statute, but it undoubtedly means courts of general jurisdiction, whether state or Federal.[37]

§ 268. **Same. State courts.** Where no question is raised as to the meaning and construction of the statutes of the United States, and Federal jurisdiction does not arise because the parties are citizens of different states, the state courts

[35] Gwillim v. Donnellan, 115 U. S. 45, bk. 29 L. ed. 348, 5 Sup. Ct. Rep. 1110, 15 Morr. Min. Rep. 482; Lily Min. Co. v. Kellogg, 27 Utah 111, 74 Pac. Rep. 518.

[35a] Madison Placer Claim (Secretary Garfield to the commissioner of the general land-office, May 2, 1907), 35 Land Dec. 551.

[36] Stevens v. Grand Central Min. Co., 133 Fed. Rep. 28, 67 C. C. A. 284.

[37] U. S. Rev. Stats., § 2326; 5 Fed. Stats. Ann., p. 35; Rule 83, post, pt. II, ch. V; Blackburn v. Portland Gold Min. Co., 175 U. S. 571, bk. 44 L. ed. 276, 20 Sup. Ct. Rep. 222, 20 Morr. Min. Rep. 358; Chambers v. Harrington, 111 U. S. 350, bk. 28 L. ed. 452, 4 Sup. Ct. Rep. 428.

are to be regarded as within the letter and meaning of section two thousand three hundred and twenty-six, as courts of competent jurisdiction to determine the right of possession to mining claims.[38] Although adverse suits may sometimes so present questions arising under the constitution or laws of the United States that the Federal courts will have jurisdiction, yet the mere fact that a suit is an adverse suit authorized by the laws of the United States is not, in and of itself, sufficient to vest jurisdiction in the Federal courts.[39]

§ 269. **Same. Subject-matter of jurisdiction.** Under sections two thousand three hundred and twenty-five and two thousand three hundred and twenty-six, courts have jurisdiction only of the right of possession to the mineral land in controversy, as between the parties litigant, and it remains, in every case, for the land department to determine all other questions touching the right to patents.[40] In an adverse suit, the court has nothing to do with the proceedings in the land-office, and no power to determine as to their regularity or irregularity, sufficiency or insufficiency.[41]

§ 270. **Same. Place.** The cause of action upon which an action is based, under the provisions of sections two thousand three hundred and twenty-five and two thousand three hundred and twenty-six of the United States Revised Statutes, is the disturbance of the possession of the complainant, or the assertion of an adverse right to a mining

[38] Blackburn v. Portland Gold Min. Co., 175 U. S. 571, 588, bk. 44 L. ed. 276, 20 Sup. Ct. Rep. 222, 20 Morr. Min. Rep. 358; Golden Fleece G. & S. Min. Co. v. Cable Consol. G. & S. Min. Co., 12 Nev. 312, 1 Morr. Min. Rep. 120.

[39] Shoshone Min. Co. v. Rutter, 177 U. S. 505, 513, bk. 44 L. ed. 864, 20 Sup. Ct. Rep. 726; Blackburn v. Portland Gold Min. Co., 175 U. S. 571, bk. 44 L. ed. 276, 20 Sup. Ct. Rep. 222, 20 Morr. Min. Rep. 358; Mountain View Min. & M. Co. v. McFadden, 180 U. S. 533, bk. 45 L. ed. 656, 21 Sup. Ct. Rep. 488; Yellow Aster Min. & M. Co. v. Winchell, 95 Fed. Rep. 213; Willitt v. Baker, 133 Fed. Rep. 937, 943.

[40] The Clipper Min. Co. v. The Eli Min. & L. Co., 33 Land Dec. 660; Wright v. Town of Hartville, 13 Wyo. 497, 81 Pac. Rep. 649, 82 Id. 450.

[41] Quigley v. Gillett, 101 Cal. 462, 35 Pac. Rep. 1040, 18 Morr. Min. Rep. 68; Hoffman v. Beecher, 12 Mont. 489, 31 Pac. Rep. 92, 17 Morr. Min. Rep. 503.

claim, or other government land, by the defendant, the possession of which is in the plaintiff, and such cause of action arises in the county where the land is situated, and not in the county wherein the government land-office is located, in which the application for patent is filed.[42] An adverse suit ousts the United States land department of all jurisdiction over the matters involved therein.[43]

§ 271. **Same. Equity jurisdiction.** In enforcing the enlarged equity jurisdiction conferred by state statutes, in suits to quiet title and right of possesion to mining property the Federal courts are careful that no provision of the Federal constitution or acts of Congress is violated. The bill of complaint, in such cases, must show affirmatively that the complainant is in possession of the premises, or that neither party is in possession. By reason of the provisions of the constitution, a Federal court sitting in equity is not given jurisdiction to try questions of title or right to possession of mining property by reason of the fact that the complainant seeks to enjoin waste on the land, pending the suit.[44] Equity has jurisdiction of a bill to quiet title to a mining claim against a claim of adverse right in the body of ore beneath the surface, growing out of intersecting extralateral rights, wherein a judgment in ejectment would leave undetermined that part of the body of the ore not involved in the trespass upon which such action of ejectment must be founded, and to which the defendant asserts a claim of right.[45]

§ 272. **Same. Removal from state to Federal court.** In transferring an adverse action from a state or territorial court to a circuit court of the United States, under the removal acts, if the jurisdictional facts do not appear in the record, they may be set up in the petition for removal, which constitutes a part of the record in the United States courts,

[42] Erwin v. Perego, 93 Fed. Rep. 608, 609, 35 C. C. A. 482.
[43] Clipper Min. Co., 22 Land Dec. 527.
[44] United States Min. Co. v. Lawson, 115 Fed. Rep. 1005.
[45] Empire State-Idaho Min. & D. Co. v. Bunker Hill & S. Min. & C. Co., 121 Fed. Rep. 973, 978, 58 C. C. A. 311, 22 Morr. Min. Rep. 560.

and is to be consulted upon any jurisdictional question in the court to which the cause is removed. This is true in a case of succession, as well as of removal. It is sufficient when the jurisdictional facts appear in the request for a transfer, even though not set up in the pleadings.[46] In the transfer of an adverse suit to a United States court, the original files should be transmitted, but where a state court, in a proper case, and upon a proper request, refuses to transmit the original files to the Federal court in which it belongs, the latter court is fully authorized to proceed in the case, upon a complete certified transcript of the case. When the request for removal is filed in the state court, its jurisdiction ceases.[47]

§ 273. **Parties to adverse suits.** In adverse suits, only those persons who have filed claims to the land in the United States land-office can properly be made parties.[48] If, at the time an application is made for patent to a mining claim, several owners of a claim whose boundaries conflict therewith, file an adverse claim in the land-office in opposition to such application, and thereafter one of such adverse claimants acquires, bona fide, all the interest of his co-owners in such conflicting claim, he may alone institute and maintain a suit in support of such adverse claim.[49]

§ 274. **Same. Heirs of deceased claimant.** A suit in support of an adverse claim to mining property must be brought by the heirs at law of a deceased locator, and not by his administrator. The right conferred by the act of Congress in a mining claim is real estate, and descends to the heirs of a locator upon his death, and they alone can maintain a suit to determine the title thereto. In such case it is necessary to allege and prove the citizenship of the deceased locator.[50]

[46] Burke v. Bunker Hill & S. Min. & C. Co., 46 Fed. Rep. 644.
[47] Burke v. Bunker Hill & S. Min. & C. Co., 46 Fed. Rep. 644.
[48] Mont Blanc Consol. Gravel Min. Co. v. Debour, 61 Cal. 364, 15 Morr. Min. Rep. 286.
[49] Willitt v. Baker, 133 Fed. Rep. 937, 944.
[50] Keeler v. Trueman, 15 Colo. 143, 25 Pac. Rep. 311.

§ 275. **Commencement of adverse suit.** Section two thousand three hundred and twenty-six of the United States Revised Statutes requires the adverse claimant, within thirty days after filing his adverse claim, to commence proceedings in a court of competent jurisdiction to determine the question of right of possession. The time allowed for commencing such proceedings cannot be extended or limited by state legislation. A provision, in a state statute of limitations, providing that in case a suit shall fail for some formal cause, not involving the merits of the controversy, another suit, if brought within a specified time thereafter, may be maintained upon the cause of action, though otherwise barred by the statute, has no application to a proceeding for disposing of public land, of which Congress has exclusive jurisdiction.[51]

A complaint or declaration based on an adverse claim, filed in a court of competent jurisdiction by an adverse claimant, within the statutory period, and in accordance with local laws, is a commencement of proceedings contemplated by section two thousand three hundred and twenty-six, though no summons issues during that period.[52]

In an action to determine an adverse claim to a mining location, the file-mark on the complaint, not being a part of the pleading, is not conclusive evidence of the date when it was filed, for the purpose of showing that it was not filed within the time required by section two thousand three hundred and twenty-six.[53]

Where an adverse claim has been filed, but no suit is brought thereon within the time fixed by law, the applicant for a patent should procure a certificate from the clerk of the proper state court, and also a certificate from the clerk of the United States court in the district, setting forth the fact that no suit has been brought on the adverse claim, and file these certificates in the local land-office.[54]

[51] Steves v. Carson, 42 Fed. Rep. 821, 16 Morr. Min. Rep. 12.

[52] De Garcia v. Eaton, 22 Land Dec. 16; Richmond Min. Co. v. Rose, 114 U. S. 576, bk. 29 L. ed. 273, 5 Sup. Ct. Rep. 1055.

[53] Hopkins v. Butte Copper Co., 29 Mont. 390, 74 Pac. Rep. 1081.

[54] See Rule 88, post, pt. II ch. V.

§ 276. Nature and form of action. Question involved. An action brought in support of an adverse claim involves but one estate, — that of possessory right. No title in fee is involved, or can be established by it.[55] An adverse claim is not the proper remedy to reach an equitable interest in a mining claim, based on the location sought to be patented, or under the original location. Such a claim is not adverse to the application for a patent, but is a claim under it, and cannot be determined by an adverse suit. Resort must be had to equity to declare a trust for the use of the claimant, under the patent when issued.[56]

§ 277. Same. Form determined by state practice. Section two thousand three hundred and twenty-six, requiring an adverse claimant to a mining claim, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the rights of others, does not prescribe the form of action; that is a question to be determined according to the state practice.[57]

§ 278. Same. Law or equity. The determination of the right of possession as between parties is pursuant to statute, and in aid of the land-office. The form of action is not provided for by statute. An action at law or a suit in equity will lie, as either may be appropriate under the particular circumstances; an action at law to recover possession when plaintiff is out of possession, and a suit in equity to quiet title when he is in possession.[58] A suit or action under the provisions of section two thousand three hundred and twenty-six of the United States Revised Statutes, to determine adverse claims to mining property, may be at law or by bill in equity. The strict rules of equity pleading are not applied to the construction of the bill in such cases. The

[55] Bennett v. Harkrader, 158 U. S. 441, bk. 39 L. ed. 1046, 15 Sup. Ct. Rep. 863, 18 Morr. Min. Rep. 224.

[56] Doherty v. Morris, 11 Colo. 12, 16 Pac. Rep. 911.

[57] Wenner v. McNulty, 7 Mont. 30, 14 Pac. Rep. 613.

[58] Perego v. Dodge, 163 U. S. 160, bk. 41 L. ed. 113, 16 Sup. Ct. Rep. 971, 18 Morr. Min. Rep. 361; Schultz v. Allyn, 5 Ariz. 152, 48 Pac. Rep. 960, 18 Morr. Min. Rep. 619.

proceeding is purely statutory, having its inception in the land-office, by the filing of an application for a patent and an adverse claim. Its purpose is to aid the department in determining the rights of the parties, and the sufficiency of the bill therefor is to be determined by the provisions of the statute. Legislation by a state, supplemental to the provisions of section two thousand three hundred and twenty-six, does not control the equity jurisdiction of the national courts. Decisions of the state supreme courts construing such provisions are not of binding force upon the national courts in their equity jurisdiction.[59]

In Alaska, by reason of the act of Congress of May 17, 1884, the occupant of an unpatented town lot may make an adverse claim upon an application for a patent of a lode mining claim, and may maintain an action in support of such adverse claim. Such action may be either at law or in equity; in equity if the claimant is in possession, and at law if he is ousted therefrom.[60]

§ 279. Same. Pleadings and proofs. To enable the adverse claimant to recover, the facts of filing an adverse claim within the statutory time, and the institution of the suit within the time limited by law, must be alleged in the complaint, and conclusively established by proof. Each party must state in his pleadings all the facts upon which he relies as showing his right to become the purchaser; all steps he has taken to avail himself of and secure his right to make the purchase. This applies to an answer, as well as to a complaint.[61]

In an action in support of an adverse claim to mining-ground, it devolves upon a defendant, who claims but a fraction of the ground in controversy, so to define the same in his pleading and by his proofs as to enable the court or

[59] Tonopah Fraction Min. Co. v. Douglass, 123 Fed. Rep. 936, 938.

[60] Young v. Goldsteen, 97 Fed. Rep. 304.

Compare: In this connection, ch. XXIX, post, where this question is fully discussed.

[61] Cronin v. Bear Creek G. Min. Co., 3 Idaho 614, 32 Pac. Rep. 204 17 Morr. Min. Rep. 548. See also Mattingly v. Lewisohn, 8 Mont. 259 19 Pac. Rep. 310; Anthony v. Jillson, 83 Cal. 396, 23 Pac. Rep. 420.

jury trying the case to determine the same with certainty. Where it appears that the boundaries of one of the locations were not properly marked upon the ground, as to one end of the claim, until after the intervention of the adverse claim, the title will relate back only to the time when the marking of the boundaries was completed.[62]

A complaint under section two thousand three hundred and twenty-six, to determine an adverse claim to mineral lands, may be amended, even after the expiration of the thirty days within which it must be filed.[63]

In the case of Durgan v. Redding,[64] which was a proceeding under section two thousand three hundred and twenty-six of the United States Revised Statutes, begun in a state court, and removed to a Federal court, the court held that a complaint filed in a state court, pursuant to said section, to determine right of possession, which alleges that the plaintiff entered upon the ground and located the same as a mineral claim, upon a vein or lode of quartz; that the claim is valuable mineral land, and contains a well-defined quartz claim, valuable for the gold contained therein; that ever since the entry and location thereof by the plaintiff, he has continued to hold, occupy, and work said claim according to law, and has done the required assessment-work thereon; that a portion of this claim had been entered upon, and claimed by the defendant as a mill site; that the portion of the claim in conflict, and claimed by the defendant as a mill site, is mineral land, containing gold in paying quantities,— discloses a cause of action in equity, which a Federal court has jurisdiction to hear and determine, and is a sufficient bill in equity for the purpose of determining such adverse claim, and states a cause of action therefor.

In an action in support of an adverse claim to mining property, an averment in the complaint, that the plaintiff or complainant was the owner of the land from an earlier stated date to the time of the commencement of the action,

[62] Croesus Min. M. & S. Co. v. Colorado Land & M. Co., 19 Fed. Rep. 78-80.

[63] Woody v. Hinds, 30 Mont. 189, 76 Pac. Rep. 1, 7.

[64] 103 Fed. Rep. 914.

is a sufficient allegation of ownership to justify the admission of proof of ownership at any time within the period alleged.[65]

In an adverse suit by a domestic corporation against an applicant for patent to a mining claim, proof of the citizenship of the stockholders of the plaintiff corporation is not necessary.[66]

§ 280. **Same. Right to trial by jury.** An action founded on an adverse claim filed in the land-office to contest the right of an applicant for a United States patent, is not a common-law action, but of an equitable nature, and parties are not entitled, as a matter of constitutional right, to a verdict by a common-law jury; the jury, at best, being but an advisory agent of the court, to enlighten its conscience, and not control its judgment.[67] In case a jury is not demanded by either party upon the trial of an action to determine an adverse claim to a mining location, and the suit is tried by the court as one of equity, without objection by the defendant, the latter is estopped to object for the first time on appeal that the action was one at law, and that he was entitled to a verdict by jury as to which, if either, party was entitled to possession of the claim.[68]

§ 281. **Establishment of right or title. Title of each party in question.** In suits brought under section two thousand three hundred and twenty-six to determine the rights of the respective parties in a mining claim, the title of each party is drawn in question, and each must establish by proof his right and title thereto, before he can obtain judgment; if neither party establishes his right, the proceeding must be dismissed.[69]

[65] Erwin v. Perego, 93 Fed. Rep. 608, 610, 35 C. C. A. 482.

[66] Jackson v. White Cloud Gold Min. & M. Co. (Colo., 1906), 85 Pac. Rep. 639.

[67] Providence Gold Min. Co. v. Burke, 6 Ariz. 323, 57 Pac. Rep. 641, 19 Morr. Min. Rep. 625.

[68] Wenner v. McNulty, 7 Mont. 30, 14 Pac. Rep. 643.

[69] Willitt v. Baker, 133 Fed. Rep. 937, 947; Tonopah Fraction Min. Co. v. Douglass, 123 Fed. Rep. 936, 941; Bay State Silver Min. Co. v. Brown, 21 Fed. Rep. 167; Becker v. Pugh, 17 Colo. 243, 29 Pac. Rep. 173.

Where an adverse claim is presented for filing within a statutory period, but rejected by the officers of the local land-office, and appeal taken from their action, the adverse claimant is required to commence judicial proceedings within such statutory period, and if he fails to do so, it constitutes a waiver of his claim.[70]

In an adverse suit, the burden of proof is on the adverse claimant to show that the mining-ground sought to be patented by the defendant was within the boundary limits of the claim previously located by the plaintiff, or by those under whom he claims.[71]

And proof that the plaintiff's location was made on ground embraced within the limits of a prior, valid, subsisting location bars his recovery.[72]

An action begun in support of an adverse claim is purely statutory, — a continuation of a contest arising in the land department,— the object being to determine the question which, if either, party to the proceeding is entitled to demand of the government title to the premises. Each of the parties is an actor, and each must establish his right by proof.[73]

In an action to quiet title to a claim or mining location against one claiming prior right thereto, the plaintiff must recover, if at all, on the strength of his own title.[74]

§ 282. **Same. Priority.** In the determination of the rights of the respective claimants of conflicting or overlapping claims, priority of location is of primary importance, and will not be ignored. If the acts done, or caused to be done, by the prior locator are valid, subsequent locators cannot ignore them, and intrude upon the ground so taken. They must take notice of what has been done by the locator and others acting with him, and where the lines of his claim are, and

[70] Deniss v. Sinnott, 35 Land Dec. 304.

[71] Porter v. Tonopah North Star T. & D. Co. (C. C. A.), 146 Fed. Rep. 385.

[72] Hoban v. Boyer (Colo., 1906), 85 Pac. Rep. 837.

[73] Gird v. California Oil Co., 60 Fed. Rep. 531, 532, 18 Morr. Min. Rep. 45.

[74] Weed v. Snook, 144 Cal. 439, 77 Pac. Rep. 1023.

of his rights therein, as to the time allowed him by law for marking his boundaries. His initial steps being valid, his right to complete his location within such time cannot be interfered with; he has the full time given him by the law, governing the territory wherein the claim is situated, to correct mistakes in running the lines, in sinking his discovery-shaft, or in running cuts upon the ground to the discovery of mineral therein, and the courses of the lode or vein.[75] And a junior discoverer and locator cannot so locate his claim as to include the point of discovery and location shaft in the actual occupancy and possession of a senior discoverer and locator.[76]

§ 283. **Same. Title in neither party.** In a suit to determine an adverse claim filed against an application for patent to a mining claim, the United States is a quasi-party, and if the court is satisfied, upon trial, that neither plaintiff nor defendant is entitled to a patent to the ground in controversy, it must so find and decide.[77] The validity of a mining location, in a suit to determine an adverse claim, before patent issued, must be tested by the law in force at the time the location was made.[78]

Establishment or Right of Title

§ 284. **Same. Indian reservation.** In an action brought in support of an adverse claim in a proceeding to obtain patent, under the mining laws, to land situated within the boundaries of a tract set apart for an Indian reservation, which had been opened for the purpose of locating, developing, and operating mines, but not to settlement, before either party should be adjudged entitled to a patent, the evidence should show that the ground claimed as placer mining ground is in fact such, and contains gold or other precious metals, and that the parties are in good faith intending to develop and operate mines.[79]

[75] Tonopah & S. L. Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 413.
[76] Faxon v. Barnard, 4 Fed. Rep. 702, 9 Morr. Min. Rep. 515.
[77] Wilson v. Freeman, 29 Mont. 470, 75 Pac. Rep. 84.
[78] Wilson v. Freeman, 29 Mont. 470, 75 Pac. Rep. 84.
[79] Durant v. Corbin, 94 Fed. Rep. 382, 20 Morr. Min. Rep. 84.

§ 285. Reasonable diligence in prosecution. No exception to rule. Under section two thousand three hundred and twenty-six, a failure to prosecute adverse proceedings with reasonable diligence to final judgment is a waiver of the adverse claim. There is no exception as to the claimant who may be beyond seas, or under disability of any kind, or who may fail to act from inadvertence or other causes. The act of Congress admits of no addition or modification by or from state statutes.[80] When one, having a conflicting right in a mining claim for which a patent is sought, files his adverse claim, and begins suit thereon within the time prescribed by the statute, but permits the suit to drag along, and be dismissed for his failure to prosecute it, he is concluded by the patent when it issues.[81] The question as to whether an adverse suit has been prosecuted with diligence is for court, and not for land department, to determine.[82]

§ 286. Judgment. Ground affected. In an action to determine adverse claims to a mining location, where the only portion of the surface of the ground of the placer location affected by the action was that part which was in conflict with the surface of the defendant's location, for which a patent had been applied, the jurisdiction of the court is limited to the extent of the conflict, and, accordingly, judgment determining the validity of a portion of the placer location outside of the points of conflict is improper.[83]

§ 287. Same. Findings by court. The rule that findings of fact, made by the court in an action at law, stand as the verdict of a jury, and cannot be reviewed on error, applies to proceedings under section two thousand three hundred and twenty-six of the United States Revised Statutes, to determine adverse claims to mining property.[84] An award of right of possession in adverse proceedings

[80] Steves v. Carson, 42 Fed. Rep. 821, 16 Morr. Min. Rep. 12.
[81] Kannaugh v. Quartette Min. Co., 16 Colo. 341, 27 Pac. Rep. 245.
[82] Davis v. McDonald, 33 Land Dec. 641; Rose v. Richmond Min. Co., 17 Nev. 25, 27 Pac. Rep. 1105.
[83] Mares v. Dillon, 30 Mont. 117, 75 Pac. Rep. 963.
[84] McIntosh v. Price, 121 Fed. Rep. 716, 717, 58 C. C. A. 136.

under section two thousand three hundred and twenty-six necessarily involves a finding by the court that due discovery of mineral was made by the party declared to have the right of possession, which may be accepted by the department as against a subsequent allegation of non-discovery on the part of another mineral claimant.[85]

§ 288. **Same. Effect of judgment.** In a suit in support of an adverse claim, it is not necessary or proper that the court shall determine by its decree that the successful party is entitled to a patent. The land department, to whom the application is made, is the tribunal invested with this power; the judgment of the court as to the right of possession is intended only to aid the land department in determining the right to a patent.[86] A judicial determination that an adverse claimant is not entitled to possession is conclusive upon the land department, irrespective of any reasons the court may have assigned for its judgment.[87] In an adverse suit, if neither party shows a compliance with the requirements of law in regard to work done upon the claim, the finding should be against both, and judgment should be rendered accordingly.[88]

If the amount in controversy is sufficient in an adverse case tried in a United States court, or a proper case is made on a writ of error to a state court, the judgment may be brought to the supreme court of the United States for review, as in other similar cases.[89]

§ 289. **Proceedings after judgment.** After final judgment, the successful party may file with the register of

[85] Reins v. Raunheim, 28 Land Dec. 526.

[86] Doe v. Waterloo Min. Co., 70 Fed. Rep. 455, 461, 17 C. C. A. 190, 18 Morr. Min. Rep. 265; Clipper M. Co. v. Eli M. Co., 194 U. S. 220, bk. 18 L. ed. 994.

[87] Wheeler v. Smith, 23 Land Dec. 395.

[88] Perego v. Dodge, 163 U. S. 160, bk. 41 L. ed. 113, 16 Sup. Ct. Rep. 971, 18 Morr. Min. Rep. 364; Jackson v. Roby, 109 U. S. 440, bk. 27 L. ed. 990, 3 Sup. Ct. Rep. 301; Bay State S. Min. Co. v. Brown, 21 Fed. Rep. 167.

[89] Blackburn v. Portland Gold Min. Co., 175 U. S. 571, bk. 44 L. ed. 276, 20 Sup. Ct. Rep. 222, 20 Morr. Min. Rep. 358; Chambers v. Harrington, 111 U. S. 350, bk. 28 L. ed. 452, 4 Sup. Ct. Rep. 428.

the land-office of the district in which the land is situated a certified copy of the judgment roll, together with the certificate of the surveyor-general as to the requisite amount of labor or improvements made on the claim, and the description required in other cases, and pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll will be certified by the register to the commissioner of the general land-office; and a patent will issue thereon for the claim, or such portion thereof as the applicant shall appear from the decision of the court to rightfully possess.[90] An application by an adverse claimant for patent to the ground in conflict, after judgment in his favor, must be accompanied by an official plat and field-notes of the land applied for, with a certificate of the surveyor-general of five hundred dollars' worth of improvements thereon.[91]

§ 290. Adverse claim must be verified within the land district. Except as herein mentioned, the adverse claim must be verified by the adverse claimant himself, or by a duly authorized agent or his attorney in fact, before an officer authorized to administer oaths in the land district where the mining claim is situated, and at the time of administering such oaths the affiant and the officer administering the same must be within the boundary lines of such land district.[92]

The exception to this requirement is this: The adverse claimant, "if residing or at the time being be beyond the limits of the [land] district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or of the state or

[90] U. S. Rev. Stats., § 2326; 5 Fed. Stats. Ann., p. 35; Rule 85, post, pt. II, ch. V; Perego v. Dodge, 163 U. S. 160, bk. 41 L. ed. 113, 16 Sup. Ct. Rep. 971, 18 Morr. Min. Rep. 364; Clipper M. Co. v. Eli, 194 U. S. 233.

[91] Albert F. Harsh, 2 Land Dec. 706.

[92] U. S. Rev. Stats., § 2335; 5 Fed. Stats. Ann., p. 49; U. S. Comp. Stats. 1901, p. 1435; Circular, 1 Land Dec. 685; Mattes v. Treasury Tunnel Min. & R. Co., 34 Land Dec. 314 (Dec., 1905).

territory where the adverse claimant may then be, or before any notary public of such state or territory." [93]

§ 291. **Dismissal of adverse proceedings.** A mineral entry, irregularly allowed during the pendency of adverse proceedings, will not be canceled for such irregularity, where, subsequently thereto, the adverse proceedings are dismissed, leaving the application in the same status as though no adverse claim had been filed.[94]

§ 292. **Adverse claimant's application.** An application for patent, by the adverse claimant, for the portion of his location not involved in his adverse proceedings, made while such proceedings are pending in a court of competent jurisdiction, and the issue of such patent, do not constitute a waiver of his right to the land in controversy in such adverse proceedings.[95]

§ 293. **Conclusiveness of findings by state court.** Findings of fact by a state court are always held to be conclusive by the United States supreme court.[96] In this decision, our highest court affirmed the decision of the supreme court of the state of California.[97]

[93] Act of April 26, 1882, 22 Stats. at L. 496; 5 Fed. Stats. Ann., p. 37; U. S. Comp. Stats. 1901, p. 1431; post, pt. II, ch. I; 1 Land Dec. 685.

[94] Mutual Min. & M. Co. v. Currency Co., 27 Land Dec. 191.

[95] Mackay v. Fox, 121 Fed. Rep. 487, 57 C. C. A. 439.

[96] Chrisman v. Miller and Home Oil Co., 197 U. S. 313, 323, bk. 49 L. ed. 770, 774, 25 Sup. Ct. Rep. 468.

[97] Chrisman v. Miller and Home Oil Co., 197 U. S. 313, bk. 49 L. ed. 770, 774, 25 Sup. Ct. Rep. 468; Miller and Home Oil Co. v. Chrisman, 140 Cal. 440, 73 Pac. Rep. 1083, 74 Id. 444, 98 Am. St. Rep. 63; Lawson v. United States M. Co. (U. S. Sup. Ct., decided Oct. 21, 1907).

CHAPTER XXII.

EFFECT AND OPERATION OF PATENT.

§ 294. In general.
§ 295. Rights of applicant for patent.
§ 296. Patent conveys the surface and subsurface.
§ 297. Distinction between lode claim and placer claim patents.
§ 298. Reservations and restrictions.
§ 299. Reforming patent.
§ 300. Conclusiveness of patent as against direct attack.
§ 301. Cannot be attacked collaterally.
§ 302. Character of land.
§ 303. Regularity of proceedings in land-office.
§ 304. Citizenship of patentee.
§ 305. Jurisdiction of land-office.

§ 294. In general. The patent is the instrument by which the fee-simple title to the mining claim is granted.[1]

§ 295. Rights of applicant for patent. Where it appears that the applicant for patent has complied with all the proceedings essential for the issuance of such patent, he is to be deemed the equitable owner of the mining-ground, and the government holds the premises in trust for him, to be delivered upon the payments specified.[2] Where the price of a mining claim has been paid to the government, the equitable rights of the purchaser are complete, and there is no obligation on his part to do further annual labor in order to obtain a patent.[3]

[1] Creede & C. C. Min. & M. Co. v. Uinta Tunnel Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266.

[2] Dahl v. Raunheim, 132 U. S. 260, bk. 33 L. ed. 324, 10 Sup. Ct. Rep. 74, 16 Morr. Min. Rep. 214; Deno v. Griffin, 20 Nev. 249, 20 Pac. Rep. 308.

[3] Benson Min. & S. Co. v. Alta Min. & S. Co., 145 U. S. 428, bk. 36 L. ed. 762, 12 Sup. Ct. Rep. 877, 17 Morr. Min. Rep. 488. In this case the court said: "It is a general rule, in respect to the sales of real estate, that when a purchaser has paid the full purchase price his equitable rights are complete, and there is nothing left in the vendor but the naked legal title, which he holds in trust for the purchaser. And this general rule of real estate law has been repeatedly applied

§ 296. **Patent conveys the surface and subsurface.** The supreme court of the United States, speaking through Justice Brewer, says: "We are of the opinion that the patent conveys the subsurface as well as the surface, . . . the only limitation on the exclusive title (as between the owners of conflicting mining claims thus conveyed) is the right given to pursue a vein which on its dip enters the subsurface."[4] In this case the court quotes with approval from the supreme court of the state of Montana,[5] saying: "Upon a valid location of a definite portion of land is founded the right of possession. The patent grants the fee, not to the surface and ledge only, but to the land containing the apex of the ledge. The right to follow the ledge upon its dip between the vertical planes of the parallel end lines extending in their own direction, when it departs beyond the vertical planes of the side lines, is expansion of the rights which would be conferred by a common-law grant." Also, quoting the language of Justice Ross, ninth circuit court of appeals: "Except as modified by the statute, no reason is perceived why one who acquires the ownership or possession of such lands [mines] should not hold them with and subject to the incidents of ownership and possession at the common law."[6]

Certificates of purchase of a mining claim are equivalent to and have like force and effect as patents issued thereon; the holder thereof possesses the same extralateral rights as the holder of the patent. Extralateral rights are conferred

by this court to the administration of the affairs of the land department of the government." See also Aurora Hill Consol. Min. Co. v. 85 Mining Co., 34 Fed. Rep. 515, 12 Sawy. C. C. 355, 15 Morr. Min. Rep. 581; Deno v. Griffin, 20 Nev. 249, 20 Pac. Rep. 308.

[4] St. Louis Min. & M. Co. v. Montana Min. Co., 194 U. S. 235, 239, bk. 48 L. ed. 953, 955, 24 Sup. Ct. Rep. 654; 9 Mont. 288, 23 Pac. Rep. 510; 17 Morr. Min. Rep. 283.

[5] Parrot Silver and Copper Co. v. Heinze, 25 Mont. 139, 64 Pac. Rep. 326, 87 Am. St. Rep. 386, 53 L. R. A. 491.

[6] Doe v. Waterloo Min. Co., 54 Fed. Rep. 935; State ex rel. Anaconda Copper Min. Co. v. Second Judicial District Court, 25 Mont. 504, 65 Pac. Rep. 1020; Consolidated Wyo. G. Min. Co. v. Champion Min. Co., 63 Fed. Rep. 540, 18 Morr. Min. Rep. 113; Calhoun G. Min. Co. v. Ajax G. Min. Co., 182 U. S. 499, 508, bk. 45 L. ed. 1200, 21 Sup. Ct. Rep. 885.

by the provisions of section two thousand three hundred and twenty-two of the United States Revised Statutes, without regard to the terms of the certificate of purchase or the patent. One who claims extralateral rights must, to sustain such claim, prove by a preponderance of evidence that he is the owner, or entitled to claim under the owner, of a valid subsisting mining location or claim, and that the vein or lode which he seeks to follow has its apex within the surface boundaries of his claim, and its downward course or dip passes without his claim through the plane of its side line, into the territory of him against whom he asserts the right.[7]

§ 297. **Distinction between lode claim and placer claim patents.** While, by the statute, the right of exclusive possession and enjoyment, whether his location be a lode claim or a placer claim, is the same, yet the effect of the patent is different. The patent of a lode claim confirms the original location, with the right of exclusive possession, and conveys title to the tract covered by the location, with all veins, lodes, and ledges having their apices therein; whereas the patent to the placer claim, while confirming the original location, and conveying title to the placer-ground, does not necessarily convey the title to all the veins, lodes, and ledges within its area. In the case of a patent for a lode claim, it is immaterial whether the lode or vein within the ground of the claim is known or unknown, since the locator is entitled to the exclusive possession and enjoyment of all veins and lodes, and the patent confirms his title thereto. But a patent of a placer claim does not convey the title to a known lode or vein within its area, unless that lode or vein is specifically applied for and paid for.[8]

A placer patent conveys to the patentee full title to all lodes or veins within the territorial limits not then known to exist, and it matters not what discoveries may be made after the issuance of the patent. Nothing then disclosed can

[7] Doe v. Waterloo Min. Co., 54 Fed. Rep. 935.

[8] Clipper Min. Co. v. Eli Min. & L. Co., 194 U. S. 220, bk. 48 L. ed. 944, 24 Sup. Ct. Rep. 632.

limit the effect of the patent, or except from its operation or scope any vein or lode within its territorial limits.[9]

§ 298. **Reservations and restrictions.** The patent to a mining claim carries with it only such rights to the land which includes the claim as the law confers, and no others, and these rights can neither be enlarged nor diminished by any reservations of the officers of the land department, resting for their fitness only upon the judgment of those officers.[10] While it is often true that the surface of mining-ground is often spoken of by the courts as an incident to the vein or lode whose apex lies within or under it, it is clear that the mining laws contain no authority for the conveyance of lodes or veins embraced in a located quartz claim, independent of the surface-ground connected with and containing or overlying them; neither is the subject of a patented grant, by itself. And while it is true that the Federal statutes, taken as a whole, give greater prominence to the lode or vein, than to the surface connected therewith, this naturally results from the fact that the lode or vein is the main subject treated; but such expressions and such prominence cannot, however, avail to permit the grant of lodes or veins embraced in a located quartz claim, regardless of the surface connected therewith.[11] A patent excepting from its grant any vein or lode "claimed or known to exist" is, in terms, broader than the language of the statute.[12] There is no authority for the insertion, in patents issued under road grants, of the clause, "excepting all mineral lands, should any such be found in the tracts aforesaid."[13]

A patent issued under the general town-site laws, for lands embraced in an unincorporated town site, is inoper-

[9] Sullivan v. Iron Silver Min. Co., 143 U. S. 431, bk. 36 L. ed. 214, 12 Sup. Ct. Rep. 555.

[10] Davis v. Wiebbold, 139 U. S. 507; bk. 35 L. ed. 238, 11 Sup. Ct. Rep. 628.

[11] Montana Ore Purchasing Co. v. Boston & M. Consol. C. & S. Min. Co., 20 Mont. 336, 51 Pac. Rep. 159, 19 Morr. Min. Rep. 186.

[12] Iron Silver Min. Co. v. Reynolds, 124 U. S. 374, bk. 31 L. ed. 466, 8 Sup. Ct. Rep. 598.

[13] Northern Pac. R. Co., 32 Land Dec. 342.

ative to convey title to any lands known to be valuable for minerals at the date of the town-site entry, or to any valid mining claim or possession held under the mining laws at the date of entry.[14]

Where a patented placer claim conflicts with a lode claim, both of which have been applied for, and the lode claimant is required to elect which of the two disconnected tracts in his claim he will retain, and he then elects one of them, such election operates as an abandonment of any rights to the other disconnected tract, taking effect immediately after the filing of his declaration of election in the local land-office, and making such tract a part of the public domain, and subject to location immediately thereafter. In the course of such case, the tract not elected is not subject to location prior to the filing of the declaration of election.[15]

§ 299. **Reforming patent.** A patent will not be reformed in equity so as to make the calls therein correspond with alleged monuments on the ground, where it is doubtful where the monuments were first located.[16]

§ 300. **Conclusiveness of patent as against direct attack.** Misrepresentation knowingly made by the applicant for a patent to a mining claim will justify the government in proceeding to set it aside. The government has the same right to demand a cancelation of a conveyance by the United States, when obtained by false representation, as a private individual, when a conveyance of his land is obtained in a like manner. Of course, in such case, the burden of proof is upon the government; the presumption attending the patent, even when directly assailed, that it was issued upon sufficient evidence that the law had been complied with by the officers of the government charged with the alienation of public lands, can only be overcome by clear and convincing proof.[17]

[14] Lalande v. Town Site of Saltese, 32 Land Dec. 211.

[15] Gurney v. Brown, 32 Colo. 472, 77 Pac. Rep. 357.

[16] Thallman v. Thomas, 102 Fed. Rep. 935.

[17] United States v. Iron Silver Min. Co., 128 U. S. 673, bk. 32 L. ed. 571, 9 Sup. Ct. Rep. 195. See also United States v. Maxwell Land-

§ 301. **Cannot be attacked collaterally.** The general rule is, that a patent fair on its face cannot be attacked collaterally, and is conclusive that there has been a valid location, and, of course, a discovery.[18] By accepting the entry and confirming it by patent, the government does not determine as to the order of the proceedings in the matter of the location, but only that all those required by law have been taken.[19] A patent for a mining claim is the highest possible evidence of title. It is presumed therefrom that all necessary steps antecedent to its issue have been taken; and this presumption embraces the fact that it is based on the discovery of a lode of mineral having its top or apex within the boundaries thereof. This presumption is conclusive against one claiming extralateral rights therein.[20] A judgment of the Interior Department, determining whether or not an application for patent for a lode mining claim is entitled to acquire the fee from the United States, cannot be collaterally attacked on questions of fact involved in that decision.[21]

A patent which has been in existence for sixteen years, and which protects rights that have been continuously exercised by the patentee and his predecessors in interest for nearly fifty years, will not be declared void as to any portion of its granted premises, solely for the reason that upon its face it purports to be based upon a single mining location, and conveys more than may lawfully be included in one location, when in fact there were several claims, which might have

Grant Co., 121 U. S. 325, sub nom. Maxwell Land-Grant Case, bk. 30 L. ed. 949, 7 Sup. Ct. Rep. 1015; Moffat v. United States, 112 U. S. 24, bk. 28 L. ed. 623, 5 Sup. Ct. Rep. 10; Colorado Coal and Iron Co. v. United States, 123 U. S. 307, bk. 31 L. ed. 182, 8 Sup. Ct. Rep. 131.

[18] Creede & C. C. Min. & M. Co. v. Uinta Tunnel, Min. & T. Co., 196 U. S. 337, 352, 353, bk. 49 L. ed. 501, 510, 511, 25 Sup. Ct. Rep. 266; St. Louis Smelt. & R. Co. v. Kemp, 104 U. S. 636, bk. 26 L. ed. 875, 11 Morr. Min. Rep. 673; Steel v. St. Louis Smelt. & R. Co., 106 U. S. 447, bk. 27 L. ed. 226, 1 Sup. Ct. Rep. 389; Calhoun G. Min. Co. v. Ajax G. Min. Co., 182 U. S. 499, bk. 45 L. ed. 1200, 21 Sup. Ct. Rep. 885.

[19] Creede & C. C. Min. & M. Co. v. Uinta Tunnel, Min. & T. Co., 196 U. S. 337, 352, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266.

[20] Iron Silver Min. Co. v. Campbell, 17 Colo. 267, 29 Pac. Rep. 513; on appeal, 135 U. S. 286, bk. 34 L. ed. 155, 10 Sup. Ct. Rep. 765, 16 Morr. Min. Rep. 218.

[21] Gurney v. Brown, 32 Colo. 472, 77 Pac. Rep. 357.

been united in a single patent upon a proper presentation of the facts.[22]

A court of equity will not interfere to declare and enforce a trust under a patent to placer mining lands, obtained by collusion and fraud, in excess of the amount allowed by law, effected by the use of dummy locators.[23]

As between a lode patentee and a tunnel-site claimant, the patent, although conclusive of the fact of discovery, is not conclusive of the date of discovery. It is proper to establish the fact by other competent evidence, that no discovery was made of mineral in the ground until subsequent to his tunnel-site location, by the rule of law that patents to land in such cases relate back to and take effect as of the date of the initiation of the right upon which they are founded.[24]

In case of variance between the locus of a patented mining claim as indicated by the tie line described in the patent, from a corner of the claim to a corner of the public survey or a United States mineral monument, and as defined upon the ground, the land department will regard as constituting the patented claim, and will not receive further applications for patent to, the tract of land embraced in the survey, and bounded by the lines actually marked on the ground by monuments substantially within the law and rules and corresponding to the description in the patent.[25]

§ 302. **Character of land.** In allowing and issuing a patent for a town site pursuant to the government statutes, the land department naturally investigates and determines that the land covered thereby is not mineral land, and this determination cannot be collaterally attacked.[26]

[22] Peabody Gold Min. Co. v. Gold Hill Min. Co., 111 Fed. Rep. 817, 49 C. C. A. 637, 21 Morr. Min. Rep. 591.

[23] Mitchell v. Cline, 84 Cal. 409, 24 Pac. Rep. 164

[24] Creede & C. C. Min. & M. Co. v. Uinta Tunnel, Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266.

[25] Sinnott v. Jewett, 33 Land Dec. 91.

[26] Carter v. Thompson, 65 Fed. Rep. 329, 18 Morr. Min. Rep. 134, wherein it was further held, that a subsequent locator of a placer mining claim on land for which a town-site patent had been issued had no status which would enable him to attack the validity of the town-site patent, on the ground that the land attempted to be located was, before the issuance of the patent, known mineral land or upon any other ground.

§ 303. **Regularity of proceedings in land-office.** The patent, as against collateral attack, is conclusive of the regularity of the proceedings in the land-office, as to matters which might or should have come before it.[27]

§ 304. **Citizenship of patentee.** The patent is conclusive of the citizenship of the patentee.[28]

§ 305. **Jurisdiction of land-office.** A patent, valid on its face, may be collaterally attacked in an action at law, and shown to be void, because issued without authority of law.[29]

[27] Dahl v. Raunheim, 132 U. S. 260, bk. 33 L. ed. 324, 10 Sup. Ct. Rep. 74, 16 Morr. Min. Rep. 214.

[28] Justice Min. Co. v. Lee, 21 Colo. 260, 40 Pac. Rep. 444, 52 Am. St. Rep. 216, 18 Morr. Min. Rep. 220.

[29] Garrard v. Silver Peak Mines, 82 Fed. Rep. 578.

CHAPTER XXIII.

MINES AND MINING CLAIMS AS PROPERTY.

§ 306. Nature of property in general.
§ 307. Possessory rights.
§ 308. Fixtures.
§ 309. Transfers of mining claims.
§ 310. Dower rights.
§ 311. Transfer by corporations.
§ 312. Sheriff's sale.
§ 313. Requisites of transfer.
§ 314. Construction and operation of transfer.
§ 315. Estoppel to deny validity of location.

§ 306. Nature of property in general. A mining claim perfected under the law is property in the highest sense of the term.[1]

§ 307. Possessory rights. The estate acquired by the locator of a mining claim is an interest in real property; a vested property right, as it is sometimes expressed.[2] And although the paramount title remains in the government, the courts have universally recognized such interest as a freehold, and in all controversies arising between the locator and other persons as to any right or claim thereto, he is treated as the owner in fee.[3]

[1] Belk v. Meagher, 104 U. S. 279, bk. 26 L. ed. 735, 1 Morr. Min. Rep. 510; Lavagnino v. Uhlig, 26 Utah 1, 71 Pac. Rep. 1046, 99 Am. St. Rep. 908, 22 Morr. Min. Rep. 610; Keeler v. Trueman, 15 Colo. 143, 25 Pac. Rep. 311.

[2] Creede & C. C. Min. & M. Co. v. Uinta Tunnel, Min. & T. Co., 196 U. S. 337, bk. 49 L. ed. 501, 25 Sup. Ct. Rep. 266; St. Louis Min. & M. Co. v. Montana Min. Co., 171 U. S. 650, bk. 43 L. ed. 320, 19 Sup. Ct. Rep. 61, 19 Morr. Min. Rep. 575; Roseville Alta Min. Co. v. Iowa Gulch Min. Co., 15 Colo. 29, 24 Pac. Rep. 920, 22 Am. St. Rep. 373, 16 Morr. Min. Rep. 93. See also Clipper Min. Co. v. Eli Min. & L. Co., 194 U. S. 220, bk. 48 L. ed. 944, 24 Sup. Ct. Rep. 632; s. c. 29 Colo. 377, 68 Pac. Rep. 286, 93 Am. St. Rep. 89, 64 L. R. A. 209.

[3] Mt. Rosa Min., M. & L. Co. v. Palmer, 26 Colo. 56, 56 Pac. Rep. 176, 77 Am. St. Rep. 215, 50 L. R. A. 289, 19 Morr. Min. Rep. 696.

§ 308. **Fixtures.** An engine set upon and bolted to timbers imbedded in the ground, and a boiler set upon a stone foundation, upon government land, intended to be used in operating a mine thereon, are fixtures to the land; and the possessory right to the mining claim, including the machinery, is real estate, within the meaning of the Colorado statutes, and the acts of Congress conferring the right to the claim.[4]

§ 309. **Transfers of mining claims.** Since mining claims are property, and there is nothing in the Federal mining laws to the contrary, they may be bought, sold, mortgaged, or otherwise disposed of, either in part or wholly, as other real property.[5] And where public land has been located as an oil-mining claim, the rights of the locator are subject to conveyance or lease before or after discovery.[6]

In Colorado, mining claims are, by express statute, declared to be real estate. This character of property possesses the quality of any other possessory title to land. It passes by inheritance, sale, mortgage, or judicial sale. So long as the locator, or his assignee, performs the required amount of work, his right of possession is exclusive against any person and against the United States. He may never obtain a patent, but when it does issue, it has relation back to the location. For the purpose of attacking the defense, he is the owner; and when this title passes from him to his assignee or grantee, it is protected in the hands of such assignee or grantee, by the registration statutes of the state, against the equitable claim thereto, or interests therein, not of record and unknown at the time of the transfer.[7]

[4] Roseville Alta Min. Co. v. Iowa Gulch Min. Co., 15 Colo. 29, 24 Pac. Rep. 920, 22 Am. St. Rep. 373, 16 Morr. Min. Rep. 93.

As to fixtures attached to mines, see **Kerr's Cyc. Civ. Code Cal.,** § 661, and note.

[5] St. Louis Min. & M. Co. v. Montana Min. Co., 171 U. S. 650, bk. 43 L. ed. 320, 19 Sup. Ct. Rep. 61, 19 Morr. Min. Rep. 575; Little Pittsburgh Min. Co. v. Annie Min. Co., 17 Fed. Rep. 57.

[6] Weed v. Snook, 14 Cal. 439, 77 Pac. Rep. 1023.

[7] Reed v. Munn (C. C. A.), 148 Fed. Rep. 737, and cases cited.

§ 310. Dower rights. The interest in a mining claim, previous to the payment of any money for the grant of the patent on the land, is nothing more than a right to the exclusive possession of the land, based upon conditions subsequent, and a failure to perform such conditions forfeits the locator's interest in the claim; hence he has no such interest in the property as will sustain a claim of dower therein against his grantee under a deed in which his wife did not join.[8] As has been said, "By the terms of the statute there is no grant of any rights to the wife. It is granted to the locator and to his heirs and assigns, and there is no condition that hampers the right to convey by encumbering it with an inchoate right of dower. And until he does some act towards paying the purchase-money he obtains no vested right of purchase or to claim a patent." An abandonment thereof by the locator surrenders merely a right to the exclusive possession, as provided for in the statute, which exclusive possession remains during the pleasure of the government. An abandonment of it by leaving it, not intending to return, or a conveyance of his interest to a third party, would seem equally to terminate that interest, and effectually to bar all possible future claim, if any existed, on the part of his wife to dower in such premises. By conveying his interest as locator, he not only ceases to do any work on the claim as provided for by the statute, but he puts another in possession, with all his rights to do the work called for by it, and gives them the right to do all that he could have done towards purchasing the land itself. When a grantee does the work, and then obtains a patent, it ought not to be burdened with any right of dower for the widow of his grantor, who had by his conveyance abandoned all his rights and given up the possession upon which they were based. The statute, by expressly providing that the locator, and his heirs and assigns, shall have the rights, clearly means to provide for a conveyance thereof to the grantee to the same extent that they were possessed by the grantor.

[8] Black v. Elkhorn Min. Co., 163 U. S. 445, bk. 41 L. ed. 221, 16 Sup. Ct. Rep. 1101, 18 Morr. Min. Rep. 375.

§ 311. **Transfer by corporations.** Under the statute of the state of Montana, expressly declaring that the board of trustees or officers of mining corporations organized under the laws of that state shall not have power to mortgage the whole or any part of the mining property of such corporation unless they shall have first called a meeting of the stockholders of such corporation in the manner provided therefor, after certain notice to be given as therein described, for the purpose of submitting to the stockholders the proposition to mortgage, and further providing for the manner of organizing and holding such meeting, and of submitting the question to them, and of the manner of their determination thereof, and for the record of the proceedings in the books of the corporation, and of the county recorder, a mortgage authorized at a meeting of the stockholders, whereat all of the stockholders were present and voted unanimously therefor, is not void, but only voidable,[9] notwithstanding there was no notice of the meeting published as required by the statute, and no record of any resolutions authorizing the making of the mortgage filed with the county recorder as required by the statute. The corporation only, or the stockholders thereof, will be heard to attack the validity of the mortgage, the provision being made expressly for their benefit. In such case, the stockholders having authorized the mortgage, and having accepted and enjoyed the benefits arising therefrom, they and the corporation would be estopped from denying its validity.[10]

§ 312. **Sheriff's sale.** The possessory title of a mining claim is subject to sheriff's sale, and title so acquired, with a subsequent continued possession, is a good transfer.[11] A purchaser of a mining claim under a sheriff's sale acquires only such rights as the locator has to sell, and which he may abandon at any time. The purchaser may proceed with necessary steps to acquire title to the mine; if he fails

[9] Boston & M. Consol. C. & S. Min. Co. v. Montana Ore P. Co., 89 Fed. Rep. 529, 19 Morr. Min. Rep. 480.

[10] Campbell v. Argenta G. & S. Min. Co., 51 Fed. Rep. 1.

[11] Lockhart v. Rollins, 2 Idaho 503, 21 Pac. Rep. 413, 16 Morr. Min. Rep. 16.

therein, and the locator completes the things necessary to be done, makes application, and in a regular proceeding therefor acquires a right to a patent, and obtains a certificate of purchase thereof, he thereby acquires a new and different right and title, to which the purchaser at the sheriff's sale is a stranger, and in which his purchase at such sheriff's sale gives him no right or interest; he is the holder of an adverse claim, within the meaning of the provisions of sections two thousand three hundred and twenty-five and two thousand three hundred and twenty-six of the United States Revised Statutes, and by his failure to file the same in the land-office within the time prescribed by statute, he is, by the issue of the certificate of sale, precluded from claiming any interest in the claim. A sheriff's deed can, in such case, at most, have only the operation of a quitclaim deed in its strictest sense.[12]

§ 313. **Requisites of transfer.** It has been held in one case that a written conveyance is not necessary to the transfer of a mining claim.[13] But the rule supported by weight of authority, and it would seem the better rule, is, that a mining claim is real estate, and, under the provisions of the statute of frauds, can be transferred only by operation of law, or by an instrument in writing signed by the owner, or by his agent authorized thereto by writing.[14] The provisions of section two thousand three hundred and twenty-two of the United States Revised Statutes, conferring upon the locator of a mining claim the exclusive right of possession and enjoyment of the claim, is in the nature of a legislative grant of an interest in the land, and the interest thus conveyed to the locator by the government cannot be

[12] Hamilton v. Southern Nevada G. & S. Min. Co., 33 Fed. Rep. 562, 15 Morr. Min. Rep. 314.

[13] Union Consol. S. Min. Co. v. Taylor, 100 U. S. 37, bk. 25 L. ed. 541, 5 Morr. Min. Rep. 323.

[14] Moore v. Hamerstag, 109 Cal. 122, 41 Pac. Rep. 805, 18 Morr. Min. Rep. 256; Garthe v. Hart, 73 Cal. 541, 544, 15 Pac. Rep. 93, 15 Morr. Min. Rep. 492; Hopkins v. Noyes, 4 Mont. 550, 2 Pac. Rep. 280, 15 Morr. Min. Rep. 287; Lavagnino v. Uhlig, 26 Utah 1, 71 Pac. Rep. 1046, 99 Am. St. Rep. 808, 22 Morr. Min. Rep. 610; s. c. 198 U. S. 443, bk. 49 L. ed. 1119, 25 Sup. Ct. Rep. 716.

transferred by parol, or otherwise than in accordance with the statute of frauds.[15]

A mining claim may be conveyed by any known description. Parol evidence is admissible in aid of such deed to apply it to the property described.[16]

A mining claim, regularly located, may be conveyed according to the lines of the location as marked on the ground, even though the surveyed lines may, in part or wholly, fall upon patented lands. Such a survey would be legal and lawful as a basis for patent, provided sufficient data be furnished thereby, or by the records of the surrounding or overlapping patented claims, considered in connection therewith, to enable the government in issuing its patent to make proper exclusion from the patent of all previously patented lands embraced within the exterior lines of the survey.[17]

§ 314. Construction and operation of transfer. A purchaser of a mining claim acquires such right or title from his vendor or grantor as he had at the time of the transfer.[18]

Parties obtaining the possession of mining property under a contract to perform certain covenants therefor, cannot retain such possession and at the same time repudiate their covenants made in consideration of such possession.[19]

A deed of bargain and sale, made by the owner of a mining claim, which granted, bargained, sold, and conveyed the premises therein described, "together with all and singular

[15] Moore v. Hamerstag, 109 Cal. 122, 41 Pac. Rep. 805, 18 Morr. Min. Rep. 256.

[16] Carter v. Bacigalupi, 83 Cal. 187, 193, 23 Pac. Rep. 361.

[17] Mono Fraction Lode Mining Claim, 31 Land Dec. 121.

[18] Clark v. McElvy, 11 Cal. 154, 3 Morr. Min. Rep. 254; Waring v. Crow, 11 Cal. 366, 5 Morr. Min. Rep. 204.

[19] Hitchens and Wife v. Nougues, 11 Cal. 28, 32, 14 Morr. Min. Rep. 649. This was a bill for specific performance of a contract of sale of an interest in mining property, in which the vendees covenanted to do certain work and account for profits and convey to the wife of the vendor one third of the premises, under which vendees obtained possession, and thereafter, by delinquent notices respecting assessments, and sales thereunder, acquired certain other outstanding interests, and then refused to perform covenants of contract, claiming to hold by adverse title.

the appurtenances thereunto belonging," for the purpose of constructing a mining-tunnel through the mining claim of the grantor, and reserving to the grantor the right to use the tunnel to work his own mines, by implication carries with it the right to dump the waste rock at the mouth of the tunnel on the land owned by the grantor at the time of the grant, such right or easement being necessary for the full and free enjoyment of the tunnel right.[20]

A grant, bargain, and sale deed of the right to enter on land for mining purposes only, and to prospect and mine the same, if the grantee should discover gold in quartz suitable for mining, together with a right of way across the land to and from such mines, is not a mere license, revocable at pleasure; but is a perpetual right to the grantee, his heirs and assigns, to exercise the privileges granted; the clause, "if he should discover any gold in quartz suitable for mining," was not a condition subsequent, upon which the vesting of his right depended, but meant that the right granted might be exercised at will, and was not dependent upon the finding of ore suitable for mining. The grant was not, however, exclusive, and was not inconsistent with the reservation of a concurrent right in the grantor, or in his subsequent grantees, nor would the exercise of such reserved right be an ouster of the first grantee. Neither would the mere non-user by him, of the privilege granted, operate to extinguish his rights.[21]

§ 315. Estoppel to deny validity of location. By a deed of bargain and sale of a mining claim, particularly designatting its surface boundaries, the grantor is estopped to deny that he or those from whom he claims had, prior to said deed, made a valid location thereof;[22] and such grantor cannot, by a subsequent location of the ground, or any

[20] Scheel v. Alhambra Min. Co., 79 Fed. Rep. 821, 18 Morr. Min. Rep. 616.

[21] Woodside v. Ciceroni, 93 Fed. Rep. 1, 35 C. C. A. 177.

[22] Drake v. Gilpin Min. Co., 16 Colo. 231, 27 Pac. Rep. 708, 17 Morr. Min. Rep. 396. See also Philes v. Hickies, 2 Ariz. 107, 18 Pac. Rep. 595; Shreve v. Copper Bell Min. Co., 11 Mont. 309, 28 Pac. Rep. 315.

part of it, obtain any title thereto which he can assert against his grantee, and thereby defeat or limit his grantee's estate, or destroy or limit any easement or right appurtenant thereto, and necessary to the enjoyment of a perfect title. By such deed the mine passes to the grantee to the same extent and to the same effect that a patent from the United States would have passed it, as against the grantor, including every vein, and every part of every vein, throughout its depth which had its apex within the surface boundaries of the claim, subject to the provisions of the Revised Statutes of the United States.[23]

A deed of bargain and sale of part of a mining claim comprising several locations, by metes and bounds, adopted without reference to any lines of the locations, conveys to the grantee all the mineral found within the limits of the ground conveyed, including the point of intersection of veins therein, with other veins belonging to the part of the claim not conveyed; the effect of the deed is to estop the grantor from questioning the grantee's title to all the mineral that may be found in veins within the surface lines of the ground conveyed extended vertically without limit. In such case the provisions of section three thousand three hundred and thirty-six of the United States Revised Statutes, as to priority of title in intersecting veins, has no application, as there is no priority of location.[24]

[23] Stinchfield v. Gillis, 96 Cal. 33, 30 Pac. Rep. 839, 17 Morr. Min. Rep. 497. This controversy was concerning the intersection of two cross-veins beneath the surface. The deed covered only part of a claim, and immediately after the deed the grantor relocated the part not conveyed, so that it was a question as to which took the intersection, under § 2336, U. S. Rev. Stats.

[24] Stinchfield v. Gillis, 107 Cal. 84, 40 Pac. Rep. 98, 18 Morr. Min. Rep. 195.

CHAPTER XXIV.

MINING RIGHTS GENERALLY.

§ 316. In general.
§ 317. Lode locations.
§ 318. Placer locations.

§ 316. In general. The general rule of the common law, to the effect that whoever had the fee of the soil owned all below the surface, is the general law of the states and territories of the United States, and in the absence of specific statutory provision or contract, the simple inquiry as to the extent of mining rights would be, Who owns the surface?[1] The owner of a mining claim is, prima facie, entitled to everything beneath the surface of his claim, and, under such prima facie title, can prevent the search of any one not showing paramount right to enter within the vertical plane of his boundaries.[2]

§ 317. Lode locations. When a locator perfects a valid location to a lode mining claim, he is entitled to the exclusive possession and enjoyment of the lands located for all purposes granted by the acts of Congress. In such case the land located is segregated from the public mineral domain of the government, and the locator has the exclusive right of possession and enjoyment of the surface and of any lode the top or apex of which is within its surface boundaries.[3] The location is not made with a view of getting benefits from the use of that surface. The purpose is to reach the vein which is hidden in the depths of the earth, and the location is made to measure rights beneath the

[1] Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

[2] Maloney v. King, 30 Mont. 158, 76 Pac. Rep. 4.

[3] Mt. Rosa Min., M. & L. Co. v. Palmer, 26 Colo. 56, 56 Pac. Rep. 176, 77 Am. St. Rep. 245, 50 L. R. A. 289, 19 Morr. Min. Rep. 696.

surface. The area of surface is not the matter of moment; the thing of value is the hidden mineral below, and each locator ought to be entitled to make his location so as to reach as much of the unappropriated, and perhaps only partially discovered and traced, vein as is possible.[4] The right of an explorer on mineral land, under the provisions of the law, is complete when he has discovered mineral and made a location. Such discovery and location gives him all the veins, lodes, and ledges the apex of which can be found within the side lines of his claim. His right of possession is as complete as if he had a government patent, provided he continues to put each year the required amount of labor and improvements thereon. If he does not care to continue to do the required amount of work on his lode each year, he may apply for a patent, and, having complied with the conditions prescribed by law, he receives a government title, and is thus absolved from doing further work on his claim. The government gives the possessor of a lode his choice, to hold it without patent or to take patent. If he attempts to take a patent, and finds that he is met with obstacles not anticipated, he may relinquish his attempt to secure a patent and continue to hold by right of possession. Thus when the applicant to enter a lode claim is met with an adverse claim, he may, if he choose so to do, avoid the legal conflict by dismissing his application for a patent, and rely on his possession given him by the local laws and customs, and a compliance therewith. If the adverse is for a portion only of the claim of the applicant, he may elect to take a patent for the portion of his claim not in controversy, and he may withdraw from his application so much of his original claim as is in controversy. By such withdrawal he leaves the part of his claim, claimed by others, in the condition it was before his application. He may abandon his claim thereto, or he may litigate as to his rights with the party claiming adversely. In other words, a party owning mining property, to a part of which the title is disputed, and to another part is not, may, if he so chooses, make his application for so much of his

[4] Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, 75, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

property as is not in controversy; and if he makes his application and finds that his title is to be disputed as to a part, he may eliminate that portion from his application and proceed on the residue.[5]

The purchaser of a lode claim from a prior locator is entitled to all the mineral veins and lodes in the claim, and the benefit of all expenditure made by his predecessor in the development thereof; and the right to such benefit is not defeated by a subsequent amended location, wherein the purchaser makes use of a discovery of his own within the limits of such purchase, and on a junior location embraced, for the greater part, within the boundaries of such purchase.[6]

§ 318. **Placer locations.** A placer location is not a location of lodes or veins underneath the surface, but is simply a claim of a tract or parcel of ground to obtain loose deposits of mineral upon or near the surface.[7] The placer location, when originally made, gives a qualified possession of the ground located. It confers upon the owner the exclusive right of possession of the surface area for all purposes incident to the uses and operation of the same as a placer mining claim. It also gives the right to all unknown lodes or veins, but not to such as are known to exist within its limits; the right to the possession of such lodes or veins can only be acquired by locating them as lode claims.[8] As the supreme court of the United States has said, "One may not go upon a prior valid placer location to prospect for unknown lodes, and get title to lode claims thereafter discovered and located in this manner and within the placer

[5] Branagan v. Dulaney, 2 Land Dec. 741; Miller v. Hamley, 31 Colo. 495, 74 Pac. Rep. 980. See also Jupiter Min. Co. v. Bodie Consol. Min. Co., 11 Fed. Rep. 666, 676, 7 Sawy. C. C. 96, 4 Morr. Min. Rep. 411; Last Chance Min. Co. v. Bunker Hill & S. Min. & C. Co., 131 Fed. Rep. 579, 583.

[6] Tam v. Story, 21 Land Dec. 440.

[7] Clipper Min. Co. v. Eli Min. & L. Co., 194 U. S. 220, bk. 48 L. ed. 944, 24 Sup. Ct. Rep. 632; s. c. 29 Colo. 377, 68 Pac. Rep. 286, 93 Am. St. Rep. 89, 64 L. R. A. 209.

[8] Mt. Rosa Min., M. & L. Co. v. Palmer, 26 Colo. 56, 56 Pac. Rep. 176, 77 Am. St. Rep. 245, 50 L. R. A. 289, 19 Morr. Min. Rep. 696.

boundaries, unless the placer owner has abandoned his claim, waives the trespass, or, by his conduct, is estopped to complain of it."[9] But where a lode claimant establishes his right to a lode or vein on a previously located placer claim, he is not entitled to more than twenty-five feet of land on each side of his vein or lode.[10] Where a location of a vein or lode has been made under the law, and its boundaries have been specifically marked on the surface so as to be readily traced, and notice of the location is recorded in the usual books of record within the district, it may safely be said that a vein or lode is known to exist, although personal knowledge of the fact may not be possessed by the applicant for the patent of a placer claim. The information which the law requires the locator to give to the public must be deemed sufficient to acquaint the applicant with the existence of the vein or lode.[11]

"Other valuable deposits." No distinction between metalliferous and non-metalliferous deposits. In Webb v. American Asphaltum Mining Company,[12] the grantors of plaintiff made a placer location upon ground containing a lode or vein of asphaltum, of the kind commonly called gilsonite, a solid valuable mineral deposit in lode form. The defendant subsequently located two lode claims thereon, and applied for a patent, whereupon plaintiff filed an adverse, and brought this action to determine the title. The sole issue was, whether title to a vein or lode of non-metalliferous mineral could be obtained by a placer location, and was dependent upon the construction of the term "other valuable deposits," occurring in section two thousand three hundred and twenty of the Revised Statutes, which provides for locating lode mining claims upon "veins or lodes of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other

[9] Clipper Min. Co. v. Eli Min. & L. Co., 194 U. S. 220, bk. 48 L. ed. 944, 24 Sup. Ct. Rep. 632; s. c. 29 Colo. 377, 68 Pac. Rep. 286, 93 Am. St. Rep. 89, 64 L. R. A. 209.

[10] Mt. Rosa Min., M. & L. Co. v. Palmer, 26 Colo. 56, 56 Pac. Rep. 176, 77 Am. St. Rep. 245, 50 L. R. A. 289, 19 Morr. Min. Rep. 696.

[11] Noyes v. Mantle, 127 U. S. 348, bk. 32 L. ed. 168, 8 Sup. Ct. Rep. 1132, 15 Morr. Min. Rep. 611.

[12] United States circuit court of appeals, eighth circuit; decided November 16, 1907, reported in 157 Fed. Rep. 203.

valuable deposits." It was contended that Congress intended to restrict the term "other valuable deposits" to deposits of a metalliferous kind, and that wherever a non-metalliferous mineral was discovered, it could be located only by a placer location; and further, that, under the act of 1897,[13] all forms of gilsonite and asphaltum may be purchased, from the government, only under authority of section two thousand three hundred and twenty-nine of the Revised Statutes.

It was held that the ground could be located only as a lode claim, and not as a placer; that the term "other valuable deposits" included all solid minerals, whether metalliferous or non-metalliferous, when found in vein form; that sections two thousand three hundred and eighteen, two thousand three hundred and nineteen, and two thousand three hundred and twenty of the Revised Statutes specified the methods by which the title to "all mineral deposits in lands" belonging to the United States may be acquired, and include not only metalliferous deposits, such as gold, silver, cinnabar, lead, tin, and copper, but all non-metalliferous minerals, such as alum, amber, asphaltum, building-stone, diamonds, guano, gypsum, limestone, mica, petroleum, marble, and slate, when found in lode formation; that the term "claims usually called placers, including all forms of deposit, excepting veins of quartz, or other rock in place," in section two thousand three hundred and twenty-nine of the Revised Statutes, means only such deposits as are loose or scattered through the land.

The court say: "The term 'other valuable deposits' occurs in a general statute enacted to provide a comprehensive and complete system for the disposition of the mineral deposits in the lands of the United States. . . . The plan of this legislation was to provide two general methods of purchasing mineral deposits from the United States, one, by lode mining claims where the valuable deposits sought were in lodes or veins in rock in place, and the other, by placer mining claims where the deposits were not in veins or lodes in rock in place, but were loose, scattered, or disseminated upon or under

[13] Post, § 435.

the surface of the land. . . . The act of 1897 was not enacted for scientists or for those specially learned in the composition and analysis of geological formations alone, or chiefly, but for citizens of common intelligence and learning who might desire to buy valuable deposits upon the lands of the United States, and to them the significance of these words, 'other mineral oils,' in this law, following as they do the word 'petroleum,' which describes a liquid, is liquid or semi-liquid mineral oils, and it does not include gilsonite or the hard forms of asphaltum. The sense in which the reader of ordinary knowledge and intelligence would take these words, the obvious common meaning of them, should be preferred to the recondite signification, which would include the solid forms of asphaltum, and for this reason the act of 1897 did not authorize the entry of lands which contain these deposits by means of placer claims. . . . Our conclusion is, that gilsonite and the harder forms of asphaltum in veins or lodes in rock in place may be entered and patented by means of the location of lode mining claims thereon, and that they may not be secured by means of placer claims upon the land in which they are found."

The question as to whether or not the term "other valuable deposits" is limited in its meaning to metalliferous minerals has not heretofore been decided by an appellate court. For this reason there has existed, among text-book writers and lawyers, a difference of opinion as to the meaning of this term. The decision was not rendered until too late to be inserted in its proper place in Chapter VI, ante. In June, 1907, Assistant Secretary of the Interior Woodruff,[14] in an opinion, said, as dicta, that non-metalliferous metals, when in lode form, should be located as lode claims, and not as placer, but he decided that marble should be located as a placer, and rejected an application for a patent to ground containing marble when located as a lode claim. The dictum of the Assistant Secretary is in harmony with the decision in the Webb case, while his decision is opposed to the dictum of the court in that case.

[14] Ante, § 65.

CHAPTER XXV.

FOLLOWING THE VEIN ON ITS COURSE OR STRIKE.

§ 319. Cannot go beyond limits of claim.

§ 319. Cannot go beyond limits of claim. The provisions of the Federal mining law[1] do not permit a vein or lode to be followed on its course or strike beyond the limits of any of the lines of the location.[2] And, under the act of 1866, the right to follow a vein upon its strike was limited to the lines of the survey purporting to embrace it.[3] The vein could not be followed on its strike beyond the vertical plane of the line laid across the course or strike of the vein.[4]

[1] U. S. Rev. Stats., § 2322; 5 Fed. Stats. Ann., p. 13; 17 Stats. at L. 91; 2 U. S. Comp. Stats. 1901, p. 1425.

[2] Watervale Min. Co. v. Leach, 4 Ariz. 34, 33 Pac. Rep. 418, 421; Southern Nevada G. & S. Min. Co. v. Holmes Min. Co., 27 Nev. 107, 73 Pac. Rep. 759.

[3] Davis v. Shepherd, 31 Colo. 141, 72 Pac. Rep. 57.

[4] McCormick v. Varnes, 2 Utah 355, 9 Morr. Min. Rep. 505; Wolfley v. Lebanon Min. Co., 4 Colo. 112, 13 Morr. Min. Rep. 282, 283

CHAPTER XXVI.

FOLLOWING LODE OR VEIN ON ITS DIP.

§ 320. General rule under act of 1866.
§ 321. General rule under act of 1872.
§ 322. Following vein on its dip into adjoining agricultural land.
§ 323. What constitutes apex.
§ 324. Identity or continuity of vein or lode.
§ 325. Test of continuity.
§ 326. Boundary lines as determining extralateral rights.
§ 327. Priority of location determines right in case of conflicting boundaries.
§ 328. Projecting lines across senior location.
§ 329. Fixing lines by agreement.
§ 330. Side lines.
§ 331. Side lines becoming end lines.
§ 332. Parallelism of end lines. Location under act of 1866.
§ 333. Same. Location under act of 1872.
§ 334. End lines must be straight lines.
§ 335. End lines not at right angles with side lines.
§ 336. End lines as fixed by conveyance.
§ 337. Vein crossing end line and departing through side line.
§ 338. Vein departing and entering same side line.
§ 339. Vein abruptly terminating before reaching end line.
§ 340. Vein lying along common side line.
§ 341. Vein other than discovery-vein.
§ 342. Vein having apex outside of boundaries.
§ 343. No right to tunnel.
§ 344. Establishment of extralateral rights.
§ 345. Patentee. Rights of.

§ 320. General rule under act of 1866. The act of 1866 gave the owner of a mining claim located under that act the right to follow the vein or lode on its dip.[1] But it did not, in terms, define the extent of that right. The courts, however, hold that the right extended to any depth of the vein, in its descent into the earth, on the dip, and into adjoining lands, limited by the end lines of the claim.[2] The

[1] Wolfley v. Lebanon Min. Co., 4 Colo. 112, 13 Morr. Min. Rep. 282.
[2] Eureka Consol. Min. Co. v. Richmond Consol. Min. Co., 4 Sawy. C. C. 302, 5 Sawy. C. C. 121, 8 Fed. Cas. 819; Wolfley v. Lebanon Min.

right of the mine-owner to follow his vein upon its dip is limited and controlled by the end lines of the lode mining claim. This is the case, when the patent is issued upon a location made under the act of 1872.[3]

The owner of a patented claim, under the law of 1866, might follow the vein or lode conveyed thereby to any depth on its descent into the earth and into adjoining land, for the entire length of the lode, within the limits fixed by the patent;[4] but not as fixed by the original lines of the claims as located; and so, in establishing the extralateral rights pertaining to such patented claim, it is unnecessary to prove such original lines in order to determine the extent of such extralateral right.[5]

Where a claim is so located that its one end line crosses the lode, and the side lines are as nearly as practical parallel therewith for the greater distance of the length of the claim, and by reason of a divergence of the lode from its course in the claim the side line crosses the lode, the locator is not deprived thereby of extralateral rights respecting such lodes, but will be limited therein to the length of the apex of the lode lying within the boundaries of his claim, measured from the end line crossing the lode to the point of departure on the side line, such distance to be carried throughout the dip of the lode, unless narrowed by a convergence of vertical planes drawn down through the end lines extended; and in cases where claims have been patented under the law of 1866, whose end lines are not parallel, in determining such extralateral rights the claim will be treated as though the locator had shortened in his claim to the point of departure of the lode at the side line, and had there established his other end line at the same angle and direction as in fact established.[6]

Co., 4 Colo. 112, 13 Morr. Min. Rep. 282; Walrath v. Champion Min. Co., 171 U. S. 293, bk. 43 L. ed. 170, 18 Sup. Ct. Rep. 909, 19 Morr. Min. Rep. 410.

[3] Walrath v. Champion Min. Co., 171 U. S. 293, bk. 43 L. ed. 170, 18 Sup. Ct. Rep. 909, 19 Morr. Min. Rep. 110.

[4] Wolfley v. Lebanon Min. Co., 4 Colo. 112, 13 Morr. Min. Rep. 282.

[5] Carson City G. & S. Min. Co. v. North Star Min. Co., 73 Fed. Rep. 597; s. c. 83 Fed. Rep. 658, 19 Morr. Min. Rep. 118.

[6] Consolidated Wyoming G. Min. Co. v. Champion Min. Co., 63 Fed. Rep. 540, 547.

§ 321. **General rule under act of 1872.** The Federal mining law, as it now stands, provides that the owner of a valid location shall have the exclusive right of possession and enjoyment of all the surface included within the lines of his locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations; but his right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of his location, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. The locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim is not authorized to enter upon the surface of a claim owned or possessed by another.[7]

Possession of the surface of a mining-claim location is possession of all veins, lodes, and ledges, although such veins, lodes, and ledges, as they go downward, may extend outside such surface lines; and such possession of the surface protects the veins outside the surface boundaries against the operation of the statute of limitations in favor of a locator of an adjoining claim who has sunk a shaft on the dip of the vein, and is and has been wrongfully taking the ore therefrom; such subsequent locator having no possession, and claiming no right to the possession, of the vein on the surface, or any part of the surface of the claim containing the apex of the vein.[8] And where two mining

[7] U. S. Rev. Stats., § 2322; 5 Fed. Stats. Ann., p. 13; 2 Comp. Stats. 1901, p. 1425; 17 Stats. at L. 91. And see Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 66 Fed. Rep. 212; Colorado Cent. Con. Min. Co. v. Turck, 50 Fed. Rep. 888, 894, 2 C. C. A. 67; Empire State-Idaho Min. & D. Co. v. Bunker Hill & S. Min. & C. Co., 121 Fed. Rep. 973, 58 C. C. A. 311.

[8] Pardee v. Murray, 4 Mont. 234, 2 Pac. Rep. 16, 15 Morr. Min. Rep. 515.

claims adjoin, the shaft of the one being sunk partially on both claims, the owner of which had applied to the adjoining owner for permission to work through the shaft so sunk, which such adjoining owner granted, but stated that he did not have any work done on his claim, such adjoining owner does not thereby estop himself from maintaining ejectment to assert his extralateral rights in a vein in his own claim, and continuing on the dip through the other claim.[9] Extralateral rights pertaining to a mining location do not cease after, and are not cut off by, the issue of a patent for the adjacent mining claim into which the vein passes from the side of the location on its dip.[10]

§ 322. **Following vein on its dip into adjoining agricultural land.** It does not seem to have been definitely settled whether or not the owner of a vein having its apex within the boundary lines of his mining claim may follow it upon its dip into adjoining agricultural ground. The case of Amador-Medean Gold Mining Company v. South Spring Hill Mining Company[11] seems to be the only one in which the question has been decided. The decision in that case was in favor of the owner of the agricultural land, Judge Sawyer saying, "The only question is, whether, under the Revised Statutes, a party discovering and acquiring title by patent from the United States to a mineral gold-bearing vein or lode having its apex within the land purchased, is entitled to follow the vein or lode down on its dip, across the boundaries of his own lands into the agricultural lands of an adjoining proprietor, who has the elder title? In my judgment he, clearly, has not. The equitable title to the agricultural lands, held by plaintiff, fully vested on the entry and payment by Hammack on June 15, 1874. After that the United States merely held the dry legal title in trust for the purchaser without any pecuniary or beneficial interest in it. From the moment of the entry, payment, and issue of

[9] Davis v. Shepherd, 31 Colo. 141, 72 Pac. Rep. 57, 22 Morr. Min. Rep. 575.

[10] Cheesman v. Hart, 42 Fed. Rep. 98, 16 Morr. Min. Rep. 263.

[11] 36 Fed. Rep. 668.

the certificate of purchase, these lands cease to be public, and become private property."

It is to be regretted that, up to this time, this question has not been, so far as we can ascertain, decided by the supreme court of the United States. We cannot help thinking that the highest court in our land might take a different view of the question from that entertained by Judge Sawyer. We think the more modern and advanced position, and a position more in harmony with present conditions, would be to hold that the owner of a valid mining claim having the apex of a lode within his boundary lines should be permitted to follow it on its dip into the adjoining ground if the latter ground is held as agricultural land.

§ 323. **What constitutes apex.** The act of Congress conferring mining rights is framed upon the hypothesis that all veins or lodes of mineral occupy a position in the earth more or less vertical. The words "top" and "apex" refer to the part of the vein which approaches nearest the surface. In some instances they may refer to the flow of the lode; that is, a part of the lode which has been detached from the body of mineral in the crevice and flowed down on the surface. In other instances, where there is no outcrop, they may mean that part of the vein which stands in the solid rock, although below a considerable body of the superficial mass.[12] A vein need not necessarily crop out upon the surface, in order that locations may be properly laid upon it. If it lies entirely beneath the surface, and the course of its apex can be ascertained by sinking shafts at different points, such shafts may be adopted as indicating the position and course of the vein; and locations may properly be made on the surface above it, so as to secure a right to the vein beneath. But where the vein does crop out along the surface, or is so slightly covered by foreign matter that the course of its apex can be ascertained by ordinary surface explorations, the statute requires that this

[12] Stevens v. Williams, 23 Fed. Cas. No. 13414, 1 Morr. Min. Rep. 566, s. c. p. 557.

course shall be substantially followed in laying claims and locations on it. Perhaps the law is not so perfect in this regard as it might be; perhaps the true course of a vein should correspond with its strike, or the line of a level run through it; but this can rarely be ascertained until considerable work has been done, and after claims and locations have become fixed. The most practicable rule is to regard the course of the vein as that which is indicated by surface outcrop or surface explorations and workings. It is on this line that claims will naturally be laid, whatever be the character of the surface, whether level or inclined.[13] This apex is not necessarily a point, but often is a line of great length. Any portion of the apex, in the course or strike of the vein, found within the limits of a claim, is sufficient discovery to entitle the locator to obtain title, since, while the owner of a vein may follow it in its descent into another's territory beyond his own side lines, he cannot follow it beyond his end lines, and the vein beyond those end lines is subject to further discovery and appropriation.[14]

§ 324. Identity or continuity of vein or lode. The law requires that a location of a mine be made according to the top or apex of the vein. When so made it gives the locator the whole vein, wherever it may go on the dip; permits him to follow it to any depth, although in its downward course it may enter adjoining ground. But he can follow it only so far as he can show that it is the same vein or lode.[15] So where the senior locator, or his grantee, discovers a mineral lode upon which he locates a claim, subsequently patented, and begins work thereon at the point of discovery, and continues to develop several hundred feet

[13] Flagstaff Silver Min. Co. v. Tarbet, 98 U. S. 463, bk. 25 L. ed. 253, 9 Morr. Min. Rep. 607.

[14] Larkin v. Upton, 144 U. S. 19, bk. 36 L. ed. 330, 12 Sup. Ct. Rep. 614, 17 Morr. Min. Rep. 465.

[15] Iron Silver Min. Co. v. Murphy, 3 Fed. Rep. 368, 2 McC. C. C. 121, 1 Colo. L. R. 16, 1 Morr. Min. Rep. 548. See also Colorado Cent. Con. Min. Co. v. Turck, 50 Fed. Rep. 888, 2 C. C. A. 67, affirmed 54 Fed. Rep. 262, 263, 4 C. C. A. 313.

on several levels, when he discovers that the vein or lode has there divided, one branch departing from its side line into a junior location, upon the surface, he thereby loses all right to the vein after its apex departs from his side line, and such junior locator may follow the vein, or, rather, the branch of the vein which has become a separate vein, beneath the surface of the senior location, in pursuit of his extralateral rights therein.[16]

§ 325. **Test of continuity.** The continuity of a vein is not to be determined by, nor does it depend upon, the existence of such materials or indications as a practical miner would follow with the expectation of finding ore; it must be a continuous streak or body of quartz, ore, or other vein-matter.[17] The solution depends upon the existence or non-existence of separate deposits of ore well defined, each inclosed by its own separate, distinct foot and hanging walls, without regard to the distance intervening, their separate existence being traceable for considerable distance in length and depth; and the fact that there exists ore-bearing cracks or seams in the intervening rock extending out from such vein, or entirely through the walls or rock from one vein to the other, does not establish the unity of the deposits, or prevent the existence of separate lodes or veins.[18] The continuity of a vein which in its downward course has a decidedly westerly dip is not destroyed by the fact that at points from one to two hundred feet apart complications arise therein by an apparent break at some parts of the vein, with overlapping and underlapping ends or margins, connected by east-dip fissures dropping down six or eight feet from the overlap to the underlap, which pinched out in their respective upward and downward courses, while at other points of the vein it was continuous,

[16] Colorado Cent. Consol. Min. Co. v. Turck, 50 Fed. Rep. 888; 2 C. C. A. 67, affirmed 51 Fed. Rep. 262, 263, 4 C. C. A. 313.

[17] Fitzgerald v. Clark, 17 Mont. 100, 42 Pac. Rep. 273, 52 Am. St. Rep. 665, 30 L. R. A. 803, affirmed Clark v. Fitzgerald, 171 U. S. 92, bk. 43 L. ed. 87, 18 Sup. Ct. Rep. 941.

[18] Doe v. Waterloo Min. Co., 54 Fed. Rep. 935, 942.

unbroken.[19] But ore disseminated at intervals, found in channels, chutes, cavities, pockets, or other irregular occurrences at intervals in quartzite, without ore connections between the same, is not a lode, within the meaning of the statute. Where both the fissure and the mineral ceases to exist, and are not found again in the same direction, or, if found, are so far off from the tracing of the vein, or so diverted from the original line, or appear under different geological conditions and surroundings, the continuity is broken, and it is not the same lode; but where there are well-defined boundaries, characterized by generally uniform hanging and foot walls, and extending on a like general plane or dip, slight evidence of ore may establish the existence of a lode.[20] Ore-bodies formed off from and connected with a fissure-vein, though lying a considerable distance from the principal vein, do not constitute a separate vein or mineral deposit.[21]

§ 326. **Boundary lines as determining extralateral rights.** The lines of a location as made and defined on its surface must control the rights of the claimant, not only as to the vein or lode within its surface lines, but also as to any extralateral rights.[22] And the rule for determining extralateral rights, that they are bounded by the prolonged planes of the legal end lines, is without qualification, and is not affected by the angle at which such end lines may cross the lode or vein, notwithstanding it may have the effect to

[19] Pennsylvania Consol. Min. Co. v. Grass Valley Explor. Co., 117 Fed. Rep. 509, 22 Morr. Min. Rep. 306.

[20] Cheesman v. Shreeve, 40 Fed. Rep. 787, 17 Morr. Min. Rep. 260.

[21] Tombstone Mill. & M. Co. v. Way Up Min. Co., 1 Ariz. 426, 25 Pac. Rep. 794. See also Colorado Cent. Con. Min. Co. v. Turck, 70 Fed. Rep. 294, 299, 17 C. C. A. 128, affirming 54 Fed. Rep. 262, 4 C. C. A. 313.

[22] Walrath v. Champion Min. Co., 171 U. S. 293, bk. 43 L. ed. 170, 18 Sup. Ct. Rep. 909, 19 Morr. Min. Rep. 410; King v. Amy & S. Consol. Min. Co., 152 U. S. 222, bk. 35 L. ed. 419, 14 Sup. Ct. Rep. 510, 18 Morr. Min. Rep. 76; Del Monte Min. & M. Co. v. Last Chance Min. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370; Amador-Medean Gold Min. Co. v. South Spring Hill G. Min. Co., 36 Fed. Rep. 666, 669; Flagstaff Silver Min. Co. v. Tarbet, 98 U. S. 463, bk. 25 L. ed. 253, 9 Morr. Min. Rep. 607.

make the plane of such end line follow and include more of the strike of the vein than such end line would if it crossed the lode at right angles.[23] In adjudicating extralateral rights, the boundary planes are to be definitely determined by the exterior lines of the surface location, and never subjected to readjustment to conform to subterraneous developments made by the working of the vein, or other veins found therein.[24]

§ 327. **Priority of location determines right in case of conflicting boundaries.** Where two several owners of min-

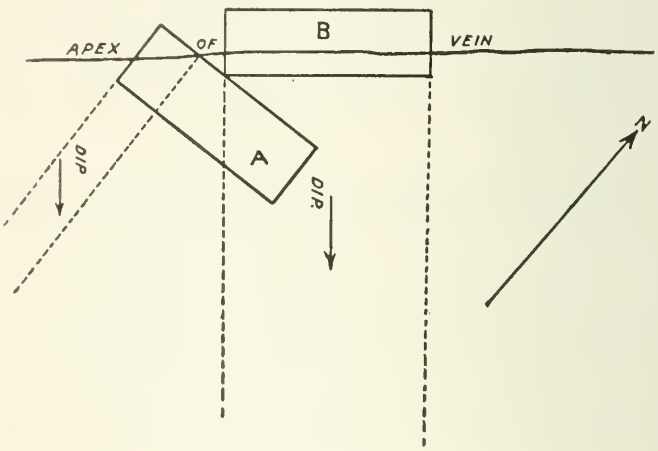

Fig. 1.

ing claims are entitled to extralateral rights in the same lode or vein, and there arises a conflict by the plane of one claim intersecting and crossing the plane of the other on the dip

[23] Bunker Hill & S. M. & C. Co. v. Empire State-Idaho Min. & D. Co., 134 Fed. Rep. 268, 271.

[24] King v. Amy & S. Consol. Min. Co., 9 Mont. 543, 24 Pac. Rep. 200, 16 Morr. Min. Rep. 30. See also Cosmopolitan Min. Co. v. Foote, 101 Fed. Rep. 518, 20 Morr. Min. Rep. 497; St. Louis Min. & M. Co. v. Montana Min. Co., 104 Fed. Rep. 664, 666, 44 C. C. A. 120, 56 L. R. A. 725, 21 Morr. Min. Rep. 57, affirmed 194 U. S. 235, bk. 48 L. ed. 953, 24 Sup. Ct. Rep. 654.

of the vein outside of their respective side lines, the mineral within such conflict belongs to the owner of the mine having prior location.[25] When a claim is located upon the ground with parallel end lines, such parallelism will not be destroyed or disturbed to interfere with the locator's extralateral rights by the location of another claim obliquely across its side lines; and in such case, if a patent shall be issued for the intersecting slice through the location, leaving parts of the claim on either side of such slice, it is not necessary that he readjust his end lines to conform to the lines of the intersecting slice and be parallel therewith; nor are his extralateral rights destroyed as to the claim in its entirety for want of such parallelism with the intersecting lines of the patented slice; in other words, in determining his right to pursue a vein having its apex within its side lines, such parallelism will not be considered with respect to the segments of his claim, but with respect to its entirety as originally located.[26]

In a suit to determine extralateral rights arising between the holders of two patented claims, the dates of their respective locations may be established by evidence aliunde the patent, where the patent itself does not expressly fix the date thereof.[27]

§ 328. Projecting lines across senior location. In the absence of objections by a senior locator, a junior locator may extend his lines upon and across the surface of such senior claims; and by so doing he acquires both surface and extralateral right, as against the government and subsequent locators, as fully as if his entire claim was laid upon unappropriated ground, subject only to the rights of

[25] Tyler Min. Co. v. Sweeney, 79 Fed. Rep. 277, 24 C. C. A. 578; Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. Rep. 557, 563, 9 C. C. A. 613; Tyler Min. Co. v. Last Chance Min. Co., 90 Fed. Rep. 15, 32 C. C. A. 498, 19 Morr. Min. Rep. 525.

[26] Cheesman v. Hart, 42 Fed. Rep. 98, 16 Morr. Min. Rep. 263.

[27] Last Chance Min. Co. v. Tyler Min. Co., 61 Fed. Rep. 557, 566, 9 C. C. A. 613; Tyler Min. Co. v. Last Chance Min. Co., 90 Fed. Rep. 15, 32 C. C. A. 498, 19 Morr. Min. Rep. 525.

such senior locator from and in his prior locations.[28] So, too, if there is no objection on the part of the senior locator, a junior locator may extend the lines of his location upon and across the surface of the senior claim; and in case there is unoccupied government land on both sides of the senior location, he will, by such location, acquire rights, surface and extralateral, therein against the government and subsequent locators, subject only to rights of prior claimants.[29] And after crossing such planes of senior location he may resume and follow the vein in its course without regard to the rights of junior locations.[30]

In a case where two mining claims overlapped, one of the locators applied for a patent, and the other filed an adverse claim; in compromise of the controversy, one claim was allowed to obtain a patent under its location for much the larger part of the lode embraced in the conflict, which, subsequent to the patent, was conveyed to a corporation formed to represent both of the conflicting interests. It was held in such case that in determining the extralateral rights pertaining to such patented location, or claim, reference must be had entirely to the end lines of the location upon which the patent is based; such extralateral rights are confined throughout the depth of the vein on its dip to the same length of the apex which lies within the boundaries of the claim as patented.[31]

§ 329. **Fixing lines by agreement.** It is always competent for the owners of adjoining mining claims to adopt a line established by a survey as their boundary or division line, and when such line is adopted and agreed to by unequivocal acts, from which an agreement may be clearly

[28] Empire State-Idaho Min. & D. Co. v. Bunker Hill & S. M. & C. Co., 131 Fed. Rep. 591, 66 C. C. A. 99; Davis v. Shepherd, 31 Colo. 141, 72 Pac. Rep. 57, 22 Morr. Min. Rep. 575.

[29] Bunker Hill & S. M. & C. Co. v. Empire State-Idaho Min. & D. Co., 109 Fed. Rep. 538, 48 C. C. A. 665, 21 Morr. Min. Rep. 317.

[30] Bunker Hill & S. M. & C. Co. v. Empire State-Idaho Min. & D. Co., 134 Fed. Rep. 268.

[31] Del Monte Min. & M. Co. v. New York & L. C. Min. Co., 66 Fed. Rep. 212, 18 Morr. Min. Rep. 188.

implied, they will be bound by such agreement, whether such adopted line be the true division or not. Such agreements are not within the statute of frauds.[32] And where the common end boundary line between the two coterminous

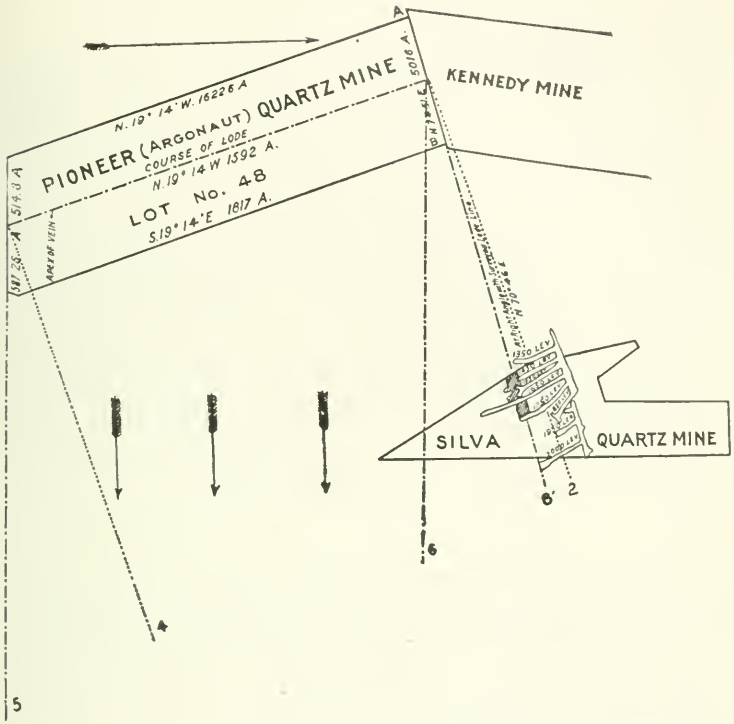

Fig. 2.

owners has been agreed upon by a compromise between their predecessors in interest, one of them is estopped from objecting to the exercise of extralateral rights by the other, on the ground that the end lines of the latter's claim are not parallel, such claim having been located prior to the act of

[32] Tonopah and Salt Lake Min. Co. v. Tonopah Min. Co. of Nevada, 125 Fed. Rep. 408.

1872 requiring end lines to be parallel; in such case the common end boundary line agreed upon governs as to the exercise of extralateral rights.[33] (Fig. 2.)

In the case of overlapping claims, the proprietors thereof may adjust the lines of conflict between them, so that no rights of others, by change of their outward boundaries, are affected thereby. If the overlap of the one shall be such as to include the discovery-shaft of the other, they may so adjust their lines as to avoid this effect, and adjoining locators of other ground not being affected by such adjustment, and not injured thereby, have no cause of complaint or ground of advantage therefor.[34]

In a case where three claims were located simultaneously with overlapping lines, an oral agreement was made between the locators of the interior and one of the exterior claims, fixing the boundary of such exterior and interior claims, and a single monument placed thereon, a subsequent purchaser of such exterior claim taking without notice of such oral agreement was held not to be bound thereby, in a litigation with locators of junior claims having no interest in such interior claim, and not being in any manner privy to such agreement.[35]

Where two parties own, in severalty, overlapping claims, the one having the superior right by priority of location, after having applied for a patent, and within thirty days of its receipt, contracts with the other for the purchase of his claim, agreeing to pay the consideration as soon as the patent shall be applied for and the final receipt issued, upon the delivery to him of such receipt with a deed for the claim, but upon the application being made he intervenes, claiming the overlap, and thereby prevents the issue of receipt and patent for the claim to the full extent thereof as located, he

[33] Kennedy Min. & M. Co. v. Argonaut Min. Co., 189 U. S. 1, bk. 47 L. ed. 685, 23 Sup. Ct. Rep. 501; Argonaut Min. Co. v. Kennedy Min. & M. Co., 131 Cal. 15, 63 Pac. Rep. 148, 21 Morr. Min. Rep. 163.

[34] Tonopah and Salt Lake Min. Co. v. Tonopah Min. Co., 125 Fed. Rep. 408, 413.

[35] Empire State-Idaho Min. & D. Co. v. Bunker Hill & S. M. & C. Co., 131 Fed. Rep. 591, 598, 599, 66 C. C. A. 99.

will be held to have contracted with reference to the state of facts known to him and the law governing the same, and he cannot interpose the failure of the vendor to acquire and convey the overlap as a breach of the contract for the purpose of avoiding performance upon his part.[36]

§ 330. **Side lines.** The side lines of a location of a lode claim are those which run on either side of the vein or lode, distant not more than three hundred feet from the center of such vein or lode.[37] These side lines should substantially correspond with the course of the vein or lode at the surface.[38] It is not necessary, however, that a location shall be, in its greatest extent, parallel to the lode.[39] The requirement of the act of Congress, that a claim shall be located with its side lines parallel with the strike of the lode at its outcrop, does not exact mathematical precision therein; the fact that the lode, in its course between the end lines, is serpentine or zigzag should not control the question of parallelism, but the general course and trend of the strike as to that portion of the lode lying within the side lines of the claim, such zigzagging, of course, being restricted to slight variations from the general direction and trend of the strike.[40]

§ 331. **Side lines becoming end lines.** If the locators of a mining claim mistake the course of the vein, and locate their claim across the vein instead of on lines parallel therewith, their side lines as located become their end lines by operation of law, and their end lines become their side lines; they are therefore entitled to follow the dip of the vein in its downward course, passing out of their legal side line

[36] Griffin v. American Gold Min. Co., 123 Fed. Rep. 283, 59 C. C. A. 301, 22 Morr. Min. Rep. 709.

[37] King v. Amy & S. C. Min. Co., 152 U. S. 222, bk. 38 L. ed. 419, 14 Sup. Ct. Rep. 510, 18 Morr. Min. Rep. 76.

[38] Flagstaff Silver Min. Co. v. Tarbet, 98 U. S. 463, bk. 25 L. ed. 253, 9 Morr. Min. Rep. 607.

[39] Watervale Min. Co. v. Leach, 4 Ariz. 34, 33 Pac. Rep. 418, 421, 17 Morr. Min. Rep. 568.

[40] Cheesman v. Hart, 42 Fed. Rep. 98, 16 Morr. Min. Rep. 263.

within the planes of their legal end lines extended to intersect the vein in its downward course.

This is well illustrated in Fig. 3, which shows the strike or trend of the vein running crosswise of the Amy lode claim, the court deciding that the side lines of the Amy were, in law, its end lines, and for this reason the owners of the Amy could not follow their vein upon its dip into the adjoining Non-Consolidated claim.[41]

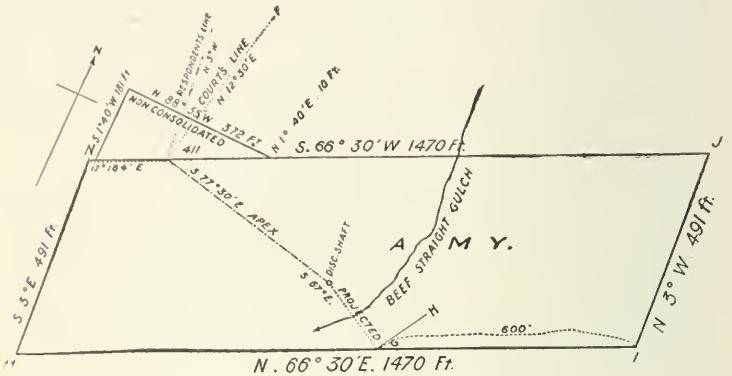

Fig. 3.

Mining claim in the shape of a triangle on the surface, such as the Non-Consolidated claim, also shown in Fig. 3, can have no parallel end lines, and the locator thereof acquires no extralateral rights appurtenant to such location, for a

[41] **U. S.** Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370; Empire Mill. & M. Co. v. Tombstone Mill. & M. Co., 131 Fed. Rep. 339; Walrath v. Champion Min. Co., 171 U. S. 293, bk. 43 L. ed. 170, 18 Sup. Ct. Rep. 909, 19 Morr. Min. Rep. 410; Manuel v. Wulff, 152 U. S. 505, bk. 38 L. ed. 532, 14 Sup. Ct. Rep. 651, 18 Morr. Min. Rep. 85; Last Chance Min. Co. v. Tyler Min. Co., 157 U. S. 683, bk. 39 L. ed. 859, 15 Sup. Ct. Rep. 733, 18 Morr. Min. Rep. 205; Flagstaff Silver Min. Co. v. Tarbet, 98 U. S. 463, bk. 25 L. ed. 253, 9 Morr. Min. Rep. 607; King v. Amy & S. Consol. Min. Co., 152 U. S. 222, bk. 38 L. ed. 419, 14 Sup. Ct. Rep. 510, 18 Morr. Min. Rep. 76; Last Chance Min. Co. v. Bunker Hill & S. Min. & C. Co., 131 Fed. Rep. 579, 66 C. C. A. 299; Cheesman v. Shreeve, 40 Fed. Rep. 787, 17 Morr. Min. Rep. 260.

Cal. Southern California R. Co. v. O'Donnell, 3 Cal. App. 382, 85 Pac. Rep. 932.

triangle has but three sides, and no two of these can be parallel with each other.[42]

§ 332. **Parallelism of end lines. Location under act of 1866.** So far as parallelism of the end lines is concerned, it would appear to be well settled that this requirement has no application in respect to locations made prior to the act of May 10, 1872. The objection of want of parallelism of end lines, when the patent was issued subsequent to the passage of that act, based upon locations made prior thereto, has been several times disposed of by the simple statement that when the locations were made there was no law requiring such parallelism.[43] Where the end lines of a patented claim, comprising several locations made prior to the act of 1872, are not parallel, but converge toward the side line from which the lode departs in its downward dip, the owner of an adjacent claim, under which the lode extends after passing such side line, has no ground for complaint, as the extralateral right under the patented claim is thereby diminished, and the law and the patent expressly grant such extralateral rights.[44]

§ 333. **Same. Location under act of 1872.** It appears to be recognized by all the authorities that compliance with the requirement of the act of May 10, 1872, that the end lines

[42] Montana Co. Lim. v. Clark, 42 Fed. Rep. 626, 16 Morr. Min. Rep. 80.

[43] **U. S.** Carson City G. & S. Min. Co. v. North Star Min. Co., 73 Fed. Rep. 597, 599, 83 Fed. Rep. 658, 669, 28 C. C. A. 333, 19 Morr. Min. Rep. 118; Iron Silver Min. Co. v. Elgin Min. & S. Co., 118 U. S. 196, 208, bk. 30 L. ed. 98, 6 Sup. Ct. Rep. 1177, 15 Morr. Min. Rep. 641; Eureka Consol. Min. Co. v. Richmond Min. Co., 4 Sawy. C. C. 302, 8 Fed. Cas. 819, 9 Morr. Min. Rep. 578, affirmed 103 U. S. 839, bk. 26 L. ed. 557.

Cal. Argonaut Min. Co. v. Kennedy Min. & M. Co., 131 Cal. 15, 63 Pac. Rep. 148, 82 Am. St. Rep. 317, 22 Morr. Min. Rep. 163, affirmed 189 U. S. 1, bk. 47 L. ed. 685, 25 Sup. Ct. Rep. 501; East Central Eureka Min. Co. v. Central M. Co., 204 U. S. 266, bk. 51 L. ed. 476, affirming 146 Cal. 147, 79 Pac. Rep. 834. In this case the patent was issued upon an application made February 7, 1871, based upon two locations of 1863 and 1865, respectively, and the question was whether the requirement of parallelism, in the act of 1872, applied to such cases; but it was held that it did not; that the case came within the purview of that portion of the act exempting existing rights from its application.

[44] Carson City G. & S. Min. Co. v. North Star Min. Co., 73 Fed. Rep. 597, 602.

shall be parallel, is essential to the existence of any right in the locator or patentee to follow his vein outside of the vertical planes down through the side lines, in all cases where the location was made under that act.

In Iron Silver Mining Co. v. Elgin Mining Co., the Stone claim was located in practically the shape of a horseshoe

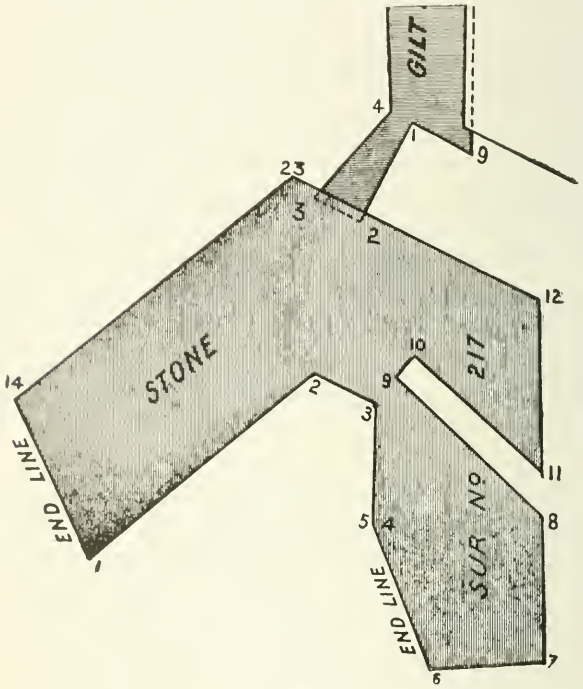

Fig. 4.

(Fig. 4), the strike or trend of the vein corresponding to this shape. The case is frequently referred to as the Horseshoe Case. Mr. Justice Field, of the United States supreme court, said: "The exterior lines of the Stone claim form a curved figure somewhat in the shape of a horseshoe, and its end lines are not, and cannot be made, parallel. What are marked on the plat as end lines are not such. The one between numbers 5 and 6 is a side line. The draughtsman or

surveyor seems to have hit upon two parallel lines of his nine-sided figure, and, apparently for no other reason than their parallelism, called them end lines. We are therefore of opinion that the objection that by reason of the surface form of the Stone claim the defendant could not follow the lode existing therein in its downward course beyond the lines of the claim, was well taken to the offered proof. Besides, if the lines marked as end lines on the plat of that claim can be regarded as such lines of the location, no part of the Gilt Edge claim falls within vertical planes drawn down through those lines continued in their own direction. In either view of the location of the Stone claim, the rejected proof would have established no defense." This eminent jurist also saying, in this case, "If the first locator will not or cannot make the explorations necessary to ascertain the true course of the vein, and draws his end lines ignorantly, he must bear the consequences. . . . Junior locators will not be prejudiced thereby, though subsequent explorations may show that he erred in his location.[45]

In a very recent Montana case[46] the plaintiffs alleged that there was in the claim a vein bearing copper and other minerals, which vein extended lengthwise of said claim, substantially parallel with the side lines and through the end lines of said claim, which end lines were parallel; that said vein so far departed from a perpendicular in its descent into the earth that it extended beyond the south-side line of the Nipper claim and into the Oden claim, owned by the defendant Washoe Company, and also into the Anaconda and Neversweat claims, owned by the defendant Anaconda Company; and that those defendants had entered upon and had mined and

[45] **U. S.** Iron Silver Min. Co. v. Elgin Min. & S. Co., 118 U. S. 196, bk. 30 L. ed. 98, 6 Sup. Ct. Rep. 1177, 15 Morr. Min. Rep. 641; Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

Cal. Argonaut Min. Co. v. Kennedy Min. & M. Co., 131 Cal. 15, 25, 63 Pac. Rep. 118, 82 Am. St. Rep. 317, 21 Morr. Min. Rep. 163, affirmed 189 U. S. 1, bk. 17 L. ed. 685, 25 Sup. Ct. Rep. 501. See also Walrath v. Champion Min. Co., 171 U. S. 293, bk. 43 L. ed. 170, 18 Sup. Ct. Rep. 909, 19 Morr. Min. Rep. 410; Daggett v. Yreka Min. Co., 149 Cal. 357, 373, 86 Pac. Rep. 698.

[46] Hickey v. Anaconda Copper Min. Co. (Mont.) 81 Pac. Rep. 806.

extracted ores from said Nipper vein. The prayer of the complaint was, that the defendants be required to set forth their respective claims, that the title of plaintiffs to the ores in said vein be quieted, and for an injunction pendente lite, and that upon final determination a decree be entered, among other things, enjoining the defendants from asserting any interest in said vein or in the Nipper claim. The answer of defendant Washoe Company admitted many of the allegations of the complaint, and alleged that the vein in the Nipper claim, called by the plaintiffs the Nipper vein, extended in a northwesterly and southeasterly direction across said Nipper claim, intersecting its side lines. It averred its ownership to the Oden claim, and that it was entitled to the possession of all the veins and ore deposits lying within the vertical boundaries of the said Oden claim. The answer of the defendant Anaconda Company asserted its ownership to the Anaconda and Neversweat claims; admitted many of the allegations of the complaint, but denied any knowledge or information sufficient to form a belief as to whether or not there was within the Nipper claim any vein extending lengthwise of said claim, or intersecting either of its end lines, and denied that the plaintiffs were the owners of or entitled to any mineral in any vein, lead, or lode within the vertical planes or boundaries of either the Anaconda or Neversweat claims. The diagram (Fig. 5) will illustrate the importance of this controversy.

The trial court awarded to the plaintiffs extralateral rights upon the Nipper vein, between a plane drawn parallel with the east-end line of the Nipper claim, passing through the northwest corner of the Oden claim (see Fig. 5), and a plane drawn through the west-end line of the Anaconda claim, and extended south to an intersection with the south-side line of the Anaconda. It was held that as the west-end line of the Anaconda and the east-end line of the Nipper were not parallel, the drawing of plane No. 2 through the west-end line of the Anaconda was not warranted. The trial court had further awarded to the plaintiffs extralateral rights upon the north prong of the Nipper vein between

plane No. 1, passing through the point A, and a plane drawn parallel with the east-end line of the Nipper, cutting the north-side line of the Anaconda at point B, and extended to an intersection with said north prong, but the court, in its award to the Nipper claim of extralateral rights, then proceeded further, as follows: "And also all the exterior part

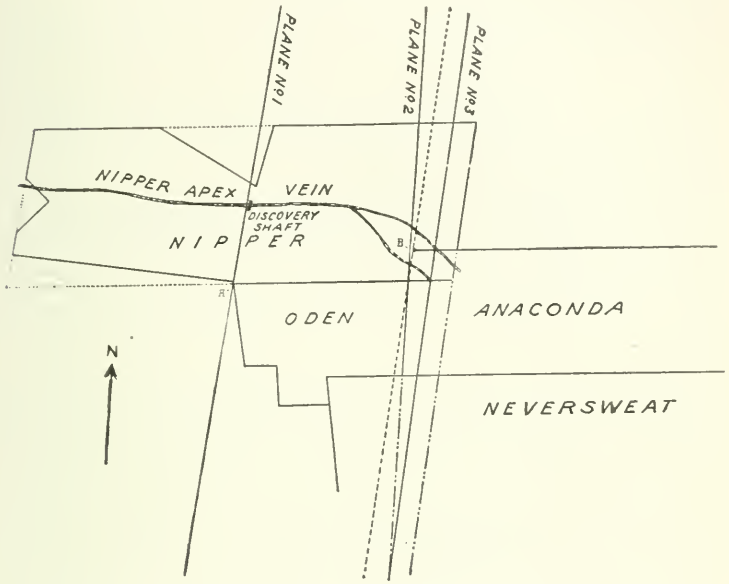

Fig. 5.

of the said Nipper vein, including all of its parts, spurs, and branches south of the plane of the south-side line of the said Anaconda lode claim, lying between the last-mentioned planes extended to an intersection therewith." The "last-mentioned planes" referred to are planes Nos. 1 and 3, but the term "Nipper vein" referred to is more difficult to understand. In this subdivision of finding No. 9, wherever the north prong of the Nipper vein is mentioned, it is appropriately referred to as the "northerly prong or branch," or "said

branch or part," while the Nipper vein (meaning the entire vein before the split occurs, or both prongs afterwards) is referred to as the "Nipper vein," or "said vein, lead, lode, or ledge." And it was held that if the court used the term "Nipper vein," in the decision, in the sense of including both prongs as shown in the diagram, the decree was erroneous, for it amounted to an award to the Nipper of extralateral rights upon both prongs or branches of the Nipper vein between plane No. 3 and a plane drawn parallel therewith through the northwestern corner of the Anaconda, wherever on their dip these prongs or branches passed under the Neversweat surface, and this notwithstanding the Anaconda had the apex of the south prong from the point where that portion crossed its west-end line.

Where a location is made in substantial conformity to the provisions of section two thousand three hundred and twenty of the United States Revised Statutes, if the end lines should not be exactly parallel, it is the right, and probably the duty, of the locator to correct the end lines in that respect, without infringing upon the surface rights of others, within a reasonable time; and having so corrected the end lines by an official survey, and by marking such new lines upon the ground, extralateral rights will be awarded according to such corrected lines, and especially as against one whose rights are not injuriously affected thereby; a mere technical objection based upon the failure to conform to the provision of the statute in the first instance will not be allowed to defeat such extralateral rights.[47] And the objection that the owner of a mining claim is precluded from the assertion of extralateral rights because of the fact that the end lines of the claim were not located parallel with each other, cannot be successfully urged, where a patent for the claim has been issued giving the claim parallel end lines and expressly granting such extralateral rights. The rights respecting the claim must be determined by the terms of the patent.[48]

[47] Doe v. Sanger, 83 Cal. 203, 23 Pac. Rep. 365, 17 Morr. Min. Rep. 298.

[48] Waterloo Min. Co. v. Doe, 82 Fed. Rep. 45, 49, 27 C. C. A. 50, 19 Morr. Min. Rep. 1; 56 Fed. Rep. 685, 17 Morr. Min. Rep. 586.

§ 334. **End lines must be straight lines.** The end lines alone define the extralateral rights, and they must be straight lines, not broken or curved lines, and to such the right on the vein below is strictly confined.[49]

§ 335. **End lines not at right angles with side lines.** Where the end lines of a mining claim are not at right angles with the side lines, the distance between the side lines, and not the length of the end lines, measures the width of the claim.[50]

§ 336. **End lines as fixed by conveyance.** In case of a conveyance of a part of a mining claim, the lines established by the conveyance, corresponding with the end lines of the claim as located, become the end lines of the portion so conveyed, whether parallel to the original end lines or not, and govern the grantee as such end lines in following the dip of the vein or lode.[51]

§ 337. **Vein crossing end line and departing through side line.** The owner of a mining claim is not debarred of his extralateral rights in a lode or vein having its apex within the boundaries of its claim, because it departs therefrom through a side line, in cases where the lode crosses one end line of a claim and continues through the greater length of the claim almost parallel with its side lines before crossing and passing out at its side line; but such extralateral rights will extend from the end line at which the lode enters the claim to the point on the lode at which it crosses the side line only.[52] (See Fig. 6.)

[49] Walrath v. Champion Min. Co., 171 U. S. 293, bk. 43 L. ed. 170, 18 Sup. Ct. Rep. 909, 19 Morr. Min. Rep. 410.

[50] Davis v. Shepherd, 31 Colo. 141, 72 Pac. Rep. 57, 22 Morr. Min. Rep. 575.

[51] Montana Ore-Purchasing Co. v. Boston & M. Consol. C. & S. Min. Co., 22 Mont. 159, 56 Pac. Rep. 120, 20 Morr. Min. Rep. 1.

[52] U. S. Tyler Min. Co. v. Last Chance Min. Co., 71 Fed. Rep. 818; 18 Morr. Min. Rep. 303; Republican Min. Co. v. Tyler Min. Co., 79 Fed. Rep. 733, 25 C. C. A. 178, 18 Morr. Min. Rep. 561; Empire State-Idaho Min. & D. Co. v. Bunker Hill & S. M. & C. Co., 111 Fed. Rep. 420, 52 C. C. A. 222, 22 Morr. Min. Rep. 132, 131 Fed. Rep. 591, 604, 66 C. C. A.

It is not necessary that the veins apexing in a mining location pass through both end lines of the location, in order to entitle the owner to follow the dip.[53]

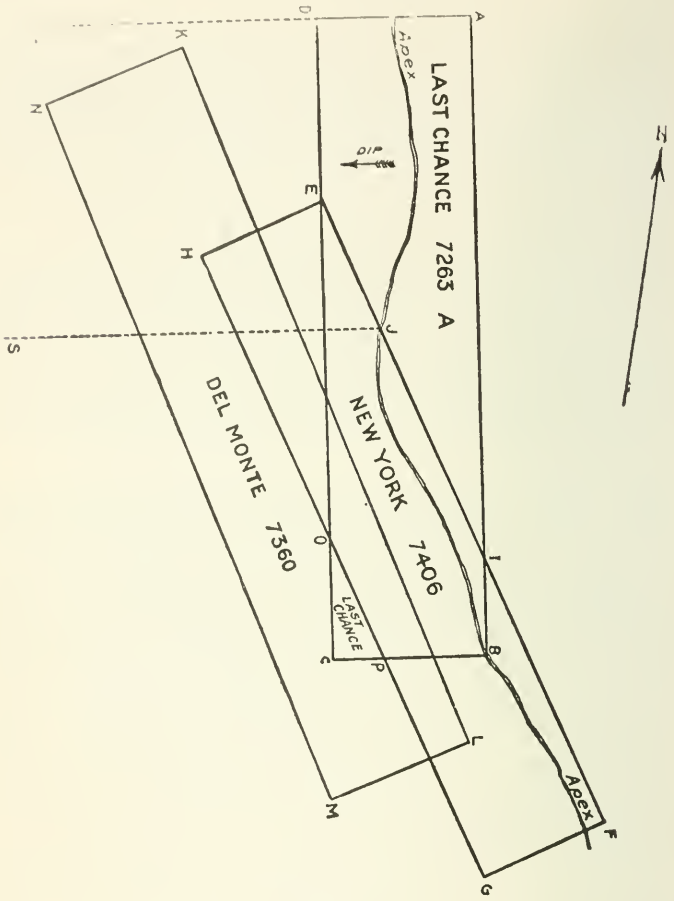

Fig. 6.

99; Del Monte Min. & M. Co. v. New York & L. C. Min. Co., 66 Fed Rep. 212, 215, 18 Morr. Min. Rep. 188; Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370; Doe v. Waterloo Min. Co., 54 Fed Rep. 935, 939.

Mont. Fitzgerald v. Clark, 17 Mont. 100, 42 Pac. Rep. 273, 52 Am. St. Rep. 665.

[53] Southern Nevada G. & S. Min. Co. v. Holmes Min. Co., 27 Nev. 107, 73 Pac. Rep. 759.

§ 338. **Vein departing and entering same side line.** Where a vein or lode, in its strike, crosses the end line of a claim and changes its direction, passing out of the side line near by, in its entirety, and again enters the side line of the claim and out through the opposite end line of the claim, the owner of such claim has no extralateral rights in that part of the vein the apex of which lies entirely outside of his surface boundaries.[54] (See Fig. 7.)

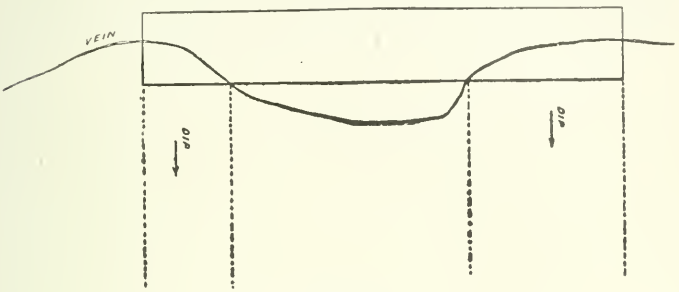

Fig. 7.

§ 339. **Vein abruptly terminating before reaching end line.** In the case of a consolidated patented mining claim, where the vein or lode enters the claim, crossing one of its end lines, and continues in a course practically parallel with its side lines for the greater part of the length of the claim, and is terminated abruptly, the point of such termination of the lode is held to be the point of intersection of the other end line of the claim in controlling the extralateral rights in such lode.[55]

§ 340. **Vein lying along common side line.** In cases where a part of the width of the apex of a vein lies outside of the side lines of a location, and within the boundaries of

[54] Waterloo Min. Co. v. Doe, 82 Fed. Rep. 45, 54, 55, 27 C. C. A. 50, 19 Morr. Min. Rep. 1.

[55] Carson City G. & S. Min. Co. v. North Star Min. Co., 83 Fed. Rep. 658, 28 C. C. A. 333, 19 Morr. Min. Rep. 118.

an adjoining junior location, the senior location containing the apex of the lode within its side lines on the greater part, the senior locator has no right to the extralateral surface of the apex, but he has the right to the extralateral lode beneath the surface in its entirety.[56]

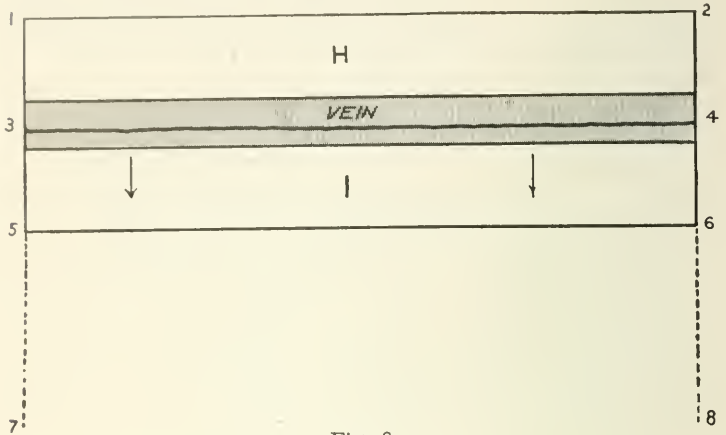

Fig. 8.

If the apex of a vein or lode is so wide as to extend beyond the side line of the senior locator into the claim of a junior locator, such junior locator would own so much of the apex as lies within his surface.[57] And when a secondary or accidental vein crosses a common side line between two mining locations at an angle, and the apex of the vein is of such width that it is for a distance partly within one and partly within the other, the ore of the entire vein belongs to the senior location until the vein has passed wholly beyond its side line up to the point of departure of the entire apex, or of the apex in its entire width.[58]

[56] Last Chance Min. Co. v. Bunker Hill & S. Min. & C. Co., 131 Fed. Rep. 579, 588, 66 C. C. A. 299; Bullion, Beck & C. Min. Co. v. Eureka Hill Min. Co., 5 Utah 3, 11 Pac. Rep. 515.

[57] Bunker Hill & S. M. & C. Co. v. Empire State-Idaho Min. & D. Co., 134 Fed. Rep. 268, 273.

[58] St. Louis Min. & M. Co. v. Montana Min. Co., 104 Fed. Rep. 664, 44 C. C. A. 120, 56 L. R. A. 725, 21 Morr. Min. Rep. 57, affirmed on other points 113 Fed. Rep. 900, 51 C. C. A. 530, 22 Morr. Min. Rep. 127, 194 U. S. 235, bk. 48 L. ed. 953, 24 Sup. Ct. Rep. 654.

§ 341. Vein other than discovery-vein. A locator is not confined to the vein upon which he based his location and upon which the discovery was made. All veins or lodes having their apices inside the planes of the surface lines extended downward are his.[59] For all veins, both discovery and secondary, of a patented claim, the owner has extralateral rights, at least for so much thereof as has its apex within the surface lines; such rights as to secondary veins are not confined to such veins as have their apices within the same segment of the claim in which the apex of the discovery-vein exists; and while the end lines of the location, as fixed and determined in the patent, are the end lines of all veins having their apices within the surface boundaries, and may constitute the bounding planes for such extralateral rights, and in no case can the locator pursue the vein on its dip outside the surface lines beyond such planes continued in their own direction until they intersect such vein, yet these bounding planes, which in all cases must be drawn parallel with the end lines, need not be coincident.[60] As the court, quoting from another case,[61] said, "Naming limits, beyond which a grant does not go, is not equivalent to saying that nothing is granted which does not extend to those limits. The locator is given a right to pursue any vein, whose apex is within his surface limits, on its dip outside the vertical side lines, but may not, in such pursuit, go beyond the vertical end lines. And this is all that the statute provides." The court further said: "This reasoning applies as much to a secondary, as to the discovery, vein. It is a vein that apexes within the surface limits, and there is, to say the least, no more reason in denying to it extralateral

[59] Calhoun Gold Min. Co. v. Ajax Gold Min. Co., 182 U. S. 499, bk. 45 L. ed. 1200, 21 Sup. Ct. Rep. 885. See also Fuller v. Harris, 29 Fed. Rep. 814, 819; Iron Silver Min. Co. v. Cheesman, 2 McC. C. C. 191, 8 Fed. Rep. 297, 9 Morr. Min. Rep. 552; Last Chance Min. Co. v. Bunker Hill & S. M. & C. Co., 131 Fed. Rep. 579, 583, 66 C. C. A. 299. Clipper M. Co. v. Eli M. & L. Co., 194 U. S. 220, bk. 48 L. ed. 944.

[60] Ajax Gold Min. Co. v. Hilkey, 31 Colo. 131, 72 Pac. Rep. 447, 22 Morr. Min. Rep. 585.

[61] Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

rights, because it does not apex within that particular part of the claim where the apex of the discovery-vein is, than there is for denying to any vein extralateral rights unless in its course it reaches the vertical planes of the end lines. Justice Brewer says this latter condition is not essential to the exercise of extralateral rights, and a fortiori, the former is not."[62]

§ 342. **Vein having apex outside of boundaries.** The grant of a mining claim, under the provisions of section two thousand three hundred and twenty-two, gives title and right of possession to such veins or lodes as have their apices within its surface boundaries only, and does not convey title or right of possession to that part of a vein within the planes of its surface lines extended downward vertically, the apex of which lies without its surface boundaries, and within the surface boundaries of another claim, although such other claim is not entitled thereto, because of the fact that it is so located as to have no parallel end lines, and is thereby

[62] Ajax Gold Min. Co. v. Hilkey, 31 Colo. 131, 72 Pac. Rep. 447, 22 Morr. Min. Rep. 585; Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

[63] Montana Co. Lim. v. Clark, 42 Fed. Rep. 626, 629, 16 Morr. Min. Rep. 80.

In the case of the Iron Silver M. Co. v. Elgin M. Co., 118 U. S. 196, 208, bk. 30 L. ed. 98, 102, 6 Sup. Ct. Rep. 1177, the court say: "Under the act of 1866 (14 Stats. 251), parallelism in the end lines of a surface location was not required; but, where a location has been made since the act of 1872, such parallelism is essential to the existence of any right in the locator or patentee to follow his vein outside of the vertical planes drawn through the side lines. His lateral right by the statute is confined to such portion of the vein as lies between such planes drawn through the end lines, and extended in their own direction; that is, between parallel vertical planes. It can embrace no other": Montana Co. Lim. v. Clark, supra.

Burden of proof on apex claimant to justify an intrusion of the land of another; he must show his proprietorship of a vein having its apex or top in another claim than the one invaded: Duggan v. Davey, 4 Dak. 110, 26 N. W. Rep. 887, 17 Morr. Min. Rep. 59.

[64] Gilpin v. Sierra Nevada Consol. Min. Co., 2 Idaho 662, 23 Pac. Rep. 547, 23 Id. 1014, 17 Morr. Min. Rep. 310.

Flat or blanket vein which has no apex confers no extralateral rights: Gilpin v. Sierra Nevada Consol. M. Co., supra.

Title to portions of such veins may be acquired by patent under the Revised Statutes of the United States relating to veins, lodes, etc.: Iron S. M. Co. v. Mike and Starr G. & S. M. Co., 143 U. S. 394, bk. 36 L. ed. 201, 12 Sup. Ct. Rep. 543, 17 Morr. Min. Rep. 436.

deprived of extralateral rights.[63] The right to follow a vein beyond the side lines of a claim pertains only to those veins having their apices within the surface boundaries.[64]

§ 343. **No right to tunnel.** An owner of a mining claim, who, by his extralateral right, may pursue a vein of mineral into and through his neighbor's claim, will not be permitted to reach such vein by tunneling from his own claim into or through his neighbor's claim to such vein direct, but must follow it from its apex in the surface lines of his own claim in its downward course.[65]

§ 344. **Establishment of extralateral rights.** Congress having prescribed the conditions upon which extralateral rights may be acquired, a party must bring himself within those conditions, or else be content with simply the mineral beneath the surface of his territory. It is undoubtedly true that the primary thought of the statute is the disposal of the mines and minerals, and in the interpretation of the statute this primary purpose must be recognized and given effect. Hence whenever a party has acquired the title to ground within whose surface area is the apex of a vein with a few or many feet along its course or strike, a right to follow that vein on its dip for the same length ought to be awarded him, if it can be done, and only if it can be done, under any fair and natural construction of the language of the statute. If the surface of the ground was everywhere level, and veins constantly pursued a straight line, there would be little difficulty in legislation to provide for all contingencies, but mineral is apt to be found in mountainous regions where great irregularity of surface exists, and the course or strike of the veins is as irregular as the surface, so that many cases may arise in which statutory provisions will fail to give a discoverer of a vein such an amount thereof as equitably it would seem he ought to receive.[66]

[63] St. Louis Min. & M. Co. v. Montana Min. Co., 113 Fed. Rep. 900, 51 C. C. A. 530, 22 Morr. Min. Rep. 127, affirmed 194 U. S. 235, bk. 48 L. ed. 953, 24 Sup. Ct. Rep. 654.

[64] Del Monte Min. & M. Co. v. Last Chance Min. & M. Co., 171 U. S. 55, 66, bk. 43 L. ed. 72, 18 Sup. Ct. Rep. 895, 19 Morr. Min. Rep. 370.

Where the owner of a mining claim asserts the right to pursue a vein into the body of another claim, the burden is upon him to establish by a preponderance of the evidence all the facts necessary to support the same.[67]

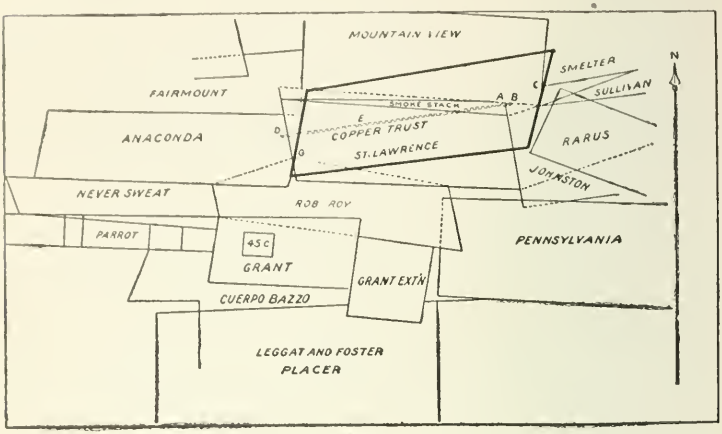

Fig. 9.

§ 345. Patentee. Rights of. One holding a patent of the United States for a mining claim is entitled to challenge the right of any intruder within the lines of his claim to any depth, as at common law, and may require such intruder to justify his intrusion by proof of proprietorship of a vein having its top or apex in some other claim, and the pursuit of which, on its downward course, has brought him into the ground in controversy, and inclusively all the incidents of a valid mining location as a basis for such asserted right of intrusion into the patented claim. All of these incidents are conclusively presumed to have been performed as to the patented claim, or to exist. The restriction in patents is

[67] Iron Silver Min. Co. v. Cheesman, 8 Fed. Rep. 297, 303, 2 McC. C. C. 191, 9 Morr. Min. Rep. 552; Iron Silver Min. Co. v. Campbell, 17 Colo. 267, 29 Pac. Rep. 513; Consolidated Wyoming G. Min. Co. v. Champion Min. Co., 63 Fed. Rep. 540, 550, 18 Morr. Min. Rep. 113; Tyler Min. Co. v. Sweeney, 54 Fed. Rep. 284, 294, 4 C. C. A. 329.

Compare: State ex rel. Anaconda Copper Min. Co. v. Second Judicial District Court, 25 Mont. 504, 65 Pac. Rep. 1020.

not on the common-law rights of ownership, but a restriction on the right to follow veins which are outside of the lines of the patented location, or, more properly, which have their apices outside of such patented locations.[68] And in an action of ejectment to recover a body of ore claimed by the defendant as within his extralateral right, where he establishes the validity of his location, and that he has reached the point of the alleged trespass by pursuing and excavating a vein of ore which had its apex within the side lines of his location, and within the planes of his end lines extended, that his location was conformable to law respecting this vein so followed, he is not guilty of trespass.[69]

[68] Duggan v. Davey, 4 Dak. 110, 26 N. W. Rep. 887, 17 Morr. Min. Rep. 59.

[69] Cheesman v. Shreeve, 40 Fed. Rep. 787, 790, 17 Morr. Min. Rep. 260; Daggett v. Yreka Min. Co., 149 Cal. 357, 380, 86 Pac. Rep. 698.

CHAPTER XXVII.

CROSSING OR INTERSECTING VEINS OR LODES.

§ 346. In general.
§ 347. Construction of "space of intersection."
§ 348. Wilhelm v. Silvester.
§ 349. Calhoun Gold Mining Company v. Ajax Gold Mining Company.

§ 346. In general. The Federal mining act provides that where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine.[1]

§ 347. Construction of phrase "space of intersection." Prior to the decision of the supreme court of the United States in 1900, the courts did not agree as to the construction of the phrase "space of intersection." One construction given to the act, and one which was uniformly followed by the Colorado courts until November, 1899, was to the effect that the phrase had reference to the intersection of the lodes or veins, and not to the intersection of the locations, and had reference to lodes or veins intersecting or crossing on their strike within the conflicting limits of the two locations.[2]

In Arizona,[3] California,[4] and Montana,[5] the courts have

[1] U. S. Rev. Stats., § 2336; 5 Fed. Stats. Ann., p. 50; 2 Comp. Stats. 1901, p. 1436.

[2] Morgenson v. Middlesex Min. & M. Co., 11 Colo. 176, 17 Pac. Rep. 513; Lee v. Stahl, 9 Colo. 208, 11 Pac. Rep. 77; s. c. 13 Colo. 174, 22 Pac. Rep. 436, 16 Morr. Min. Rep. 152; Branagan v. Dulaney, 8 Colo. 408, 8 Pac. Rep. 669.

[3] Watervale Min. Co. v. Leach, 4 Ariz. 34, 33 Pac. Rep. 418, 17 Morr. Min. Rep. 568.

[4] Wilhelm v. Silvester, 101 Cal. 358, 35 Pac. Rep. 997.

[5] Pardee v. Murray, 4 Mont. 234, 2 Pac. Rep. 16, 15 Morr. Min. Rep. 515.

held that the phrase "space of intersection" has reference to the intersection of the veins or lodes, but that the provision applied only when one or both of the locations were made prior to the act of 1872, or when, if made after that act was passed, the veins intersect or cross on their dip, but did not apply to veins which intersect or cross on their strike within the conflicting limits of locations made after the passage of the act of 1872.

§ 348. **Wilhelm v. Silvester.**[6] In this case the supreme court of California held that the provisions of the section could readily be construed as intending to protect the rights of old ledge locations, and, speaking of veins intersecting on their dip, said: "Moreover, there is strong reason for thinking that such an intersection was the very one in the mind of Congress when it passed section 2336; for in that section, and speaking of the same subject, it says that: 'where two or more veins unite, the oldest or prior location shall take the vein below the point of union,' and if the other kind of intersection was in the minds of the legislators at that time, they would not have used the word 'below'; for 'below' would not apply at all to a union on the strike of two veins, such as the appellant's rights depend on in the case at bar." But the chief justice of the state, concurring in the result, observed: "I think, however, that too much is conceded both in the opinion of the court and in the argument of counsel for respondent in assuming that the provisions of section 2336 cannot be applied to locations made since the passage of the mining law of 1872, on veins which intersect upon their strike, without bringing it in conflict with the plain terms of section 2322. This wholly unwarranted assumption has been the source of all the trouble and difficulty which the land-office and some of the state courts have encountered in their attempts to construe provisions of a statute which are in perfect harmony, but which have been erroneously supposed to be inconsistent."

[6] 101 Cal. 358, 35 Pac. Rep. 997.

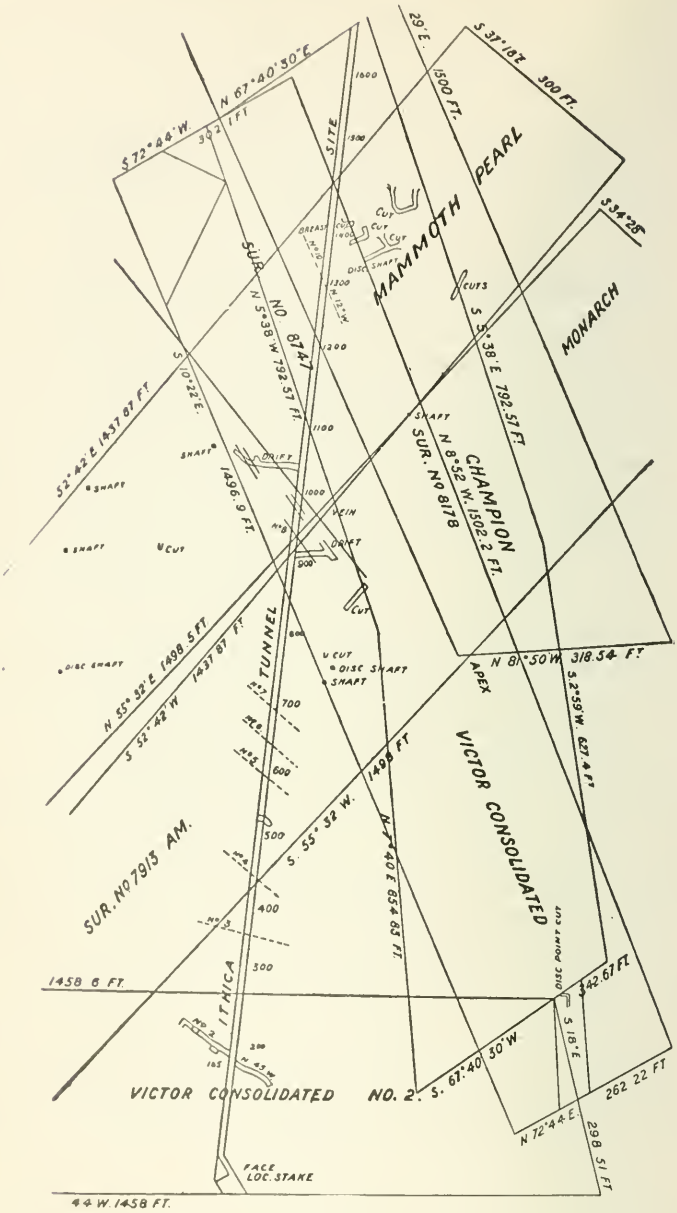
S 37° 18' E 300 FT.
1500 FT.
29' E.
PEARL
S 34° 25'
MONARCH
MAMMOTH
CUTS
S 5° 38' E 792.57 FT.
N 67° 40' 30" E
S 72° 44' W.
SUR. NO 8747
N 5° 38' W 792.57 FT.
S 10° 22' E.
S 52° 42' E 1437.87 FT.
SHAFT
DRIFT
1496.9 FT.
VEIN
U CUT
DISC SHAFT
CHAMPION
N 8° 52' W. 1502.2 FT.
SUR. NO 8178
N 55° 32' E 1498.5 FT.
S 52° 42' W 1437.87 FT.
TUNNEL
N 8° 50' W 318.54 FT.
S 2° 59' W. 627.4 FT.
APEX
VICTOR CONSOLIDATED
1498 FT
N 77° 40' E 654.83 FT.
S. 55° 32' W.
SUR. NO 7913 AM.
1458.6 FT.
ITHACA
342.67 FT
S 18° E
262.22 FT
S. 67° 40' 30" W
N 72° 44' E.
298.51 FT.
VICTOR CONSOLIDATED NO. 2
FACE
LOC. STAKE
44 W 1458 FT.

Fig. 10.

§ 349. Calhoun Gold Mining Company v. Ajax Gold Mining Company.[7] This was an action by the plaintiff appellee, the owner of the Monarch, Mammoth Pearl, Ajax, and Champion lode mining claims to recover damages and to restrain the defendant appellant from removing ore claimed to be within the boundaries of those claims. The defendant answered, justifying its removal of ore on the ground that it was the owner of the Victor Consolidated claim, the vein of which crossed each of those embraced within the claims of the plaintiff. The accompanying reproduction of the plat, which the parties stipulated was correct, showing the relative location of the respective properties over which that controversy arose, will, it is believed, materially aid in understanding the questions involved and the final decision reached by the court.

The first question coming before the court to be determined was, whether or not, by reason of the previous decisions in Colorado cited heretofore in support of the second construction stated, the doctrine of stare decisis applied; but it was held that since the question had not been passed upon and determined by the supreme court of the United States, the doctrine did not apply, and hence they were free to reconsider the question, which they did, reaching a decision contrary to those which had been recognized as the law up to that time. As was said by the supreme court of Colorado in that case, the act does not purport to provide for the location of cross-veins over territory included within a prior valid and subsisting location. Its purpose appears to be to fix the rights of the claimants of such veins, to settle what might otherwise be conflicting rights between claimants of veins crossing or intersecting each other, and provide easements for the benefit of the claimants of such veins; and that unless, in making such provisions, it impliedly gives the junior cross claimant the ore of his vein, except at the point where it intersects the vein of a senior location, the doctrine

[7] 182 U. S. 499, bk. 45 L. ed. 1200, 21 Sup. Ct. Rep. 885, affirming 27 Colo. 1, 59 Pac. Rep. 607, 83 Am. St. Rep. 17, 50 L. R. A. 209, 20 Morr. Min. Rep. 192.

announced in the previous Colorado decisions was not sound; so that, in order to determine what rights are conferred upon a junior cross claimant under this section, the real question is, What is meant by the phrase "space of intersection"? The court also said that the words "intersect" and "cross" are not strictly synonymous, and in using both it must be presumed that Congress intended to provide for different conditions. Veins might intersect either on their strike or dip, and not cross. In that event it was necessary to provide which location should have the ore at the space of intersection, and it was declared that the prior location should have the ore within that space. In case they crossed, then a further provision was necessary, and it was provided that the junior locator should have the right of way through the space of intersection for the convenient working of his mine. In the case of locations made under the act of 1872, or prior to that date, which were substantially parallel, the respective veins in each might either intersect or cross upon their dip, in which event it would be necessary to provide which should be entitled to the ore within the space of vein intersection; and here, again, the meaning of the phrase "space of intersection," or the subject to which it refers, is the intersection of the veins. The court then, in answer to the possible argument that the construction thus far given might be in conflict with section two thousand three hundred and twenty-two, for the reason that under the latter section the ownership of the "space of intersection" would depend upon which vein filled that space, said that even if this be true the act must be considered as a whole; and that if the construction given to section two thousand three hundred and thirty-six did not modify section two thousand three hundred and twenty-two, it was not violating any rule applicable to the construction of different sections of the same act, which apparently conflict; but they denied that there was any such conflict. The Colorado court, speaking through Gabbert, J., said that section 2336 "gives to the locator the veins to which his rights attach throughout their entire depth, and if upon their strike (limiting the latter to rights which

vested prior to the tenth day of May, 1872), or in descending into the earth, a body of ore bounded by the foot and hanging walls of his veins extended in their general course has been intruded from another source, or if in descending they unite with other veins, these are not reasons why he should not be the owner of such spaces of intersection, or enlargements of his veins, caused by intersecting or uniting with others, but, on the contrary, according to the terms of section 2322, he should be; provided, of course, that his title is prior to that of the location of the veins intersecting or uniting with his. So that the construction of these sections under the conditions noted renders them harmonious, and section 2336 simply recognizes that in conflicts in such cases priority of title should govern, — a test which is clearly in harmony with section 2322, and limits the provisions of section 2336 thus far to easements only. It may also be said that an easement would exist in favor of a junior claimant to follow his vein through the space of intersection caused by veins crossing upon their dip, because by section 2322 the locator is entitled to follow a vein in its course into the earth outside the vertical side lines of his location. This may be true, but as to veins crossing on their strike no such right is impliedly given by that section, and, as we have endeavored to demonstrate, such a right was necessary under conditions above noted." By section 2322 the locator is "given title to all such veins." "Such being the case, was it intended by section 2336 to modify that grant, or vest title in a cross claimant to any part of a vein apexing within the boundaries of a prior valid location, and, especially, what rights were intended to be granted or fixed under the conditions now being considered? It provides that in such cases priority of title shall be the test by which the ownership of the ore at the space of intersection shall be determined. That is in accord with the rights conferred by section 2322. So stating, however, is not equivalent to a grant. That language does not import that an exception is carved out of an estate which has already passed. Under the facts now in mind, the senior locator, by virtue of section 2322,

would own the ore of the junior cross-vein within the boundaries of his location; and, before that right could be divested under section 2336, it must appear from the wording of the latter that such right is thereby expressly excepted. That the language of this section is not susceptible of the construction that creates such an exception, it seems to us is clear, when we bear in mind that which we have already stated, — that it does not pretend to deal with the location of cross-veins over senior valid locations, but the purpose of which was to provide for easements, and settle rights which otherwise might be doubtful, or the subject of controversy, without some further declarations than those contained in section 2322; and so we conclude that, to render the two sections harmonious, the 'space of intersection,' as used in section 2336, when applied to the facts now being considered, means the intersection of the claims." In reaching the second part of their decision, to the effect that the phrase in question applies to veins or lodes intersecting on their strike within the conflicting limits of claims located subsequent to the act of 1872, the court said, "Without such right, a portion of his claim might be rendered valueless. But, if the expression 'space of intersection' is limited to the intersection of veins as the space through which he should have a right of way for the convenient working of his mine, it would be of no avail, for he would have no right under which he could reach that easement; and so, again, in order to recognize one which would be of any value to the junior cross claimant, the space of intersection must also mean the intersection of the claims." Finally, summing up, the court said: "Our conclusion is that the provisions of section 2336 apply to locations made under the act of 1872, as well as before; refer to the intersection or crossing of veins either upon their strike or dip; that the space of intersection, in determining the ownership of ore within such space, means either intersection of veins or conflicting claims, according to the facts in each particular case, and grants a right of way to the junior claimant for the convenient working of his mine through such space upon the veins (underneath the surface)

which he owns or controls outside of that space. This construction renders the two sections entirely harmonious, gives effect to every clause and part of each, and, in so far as section 2336 regulates or in any manner provides for rights as between conflicting claims, it applies only to intersections consistent with all the provisions of section 2322."

In affirming the decision of the supreme court of the state of Colorado in this case, the supreme court of the United States said: "Section two thousand three hundred and thirty-six does not conflict with section two thousand three hundred and twenty-two, but supplements it. Section two thousand three hundred and thirty-six imposes a servitude upon the senior location, but does not otherwise affect the exclusive rights given the senior location." But, as matter of fact, the court leaves in doubt just how far they mean to decide as to the true construction of the phrase "space of intersection."

CHAPTER XXVIII.

UNITING VEINS.

§ 350. In general.
§ 351. Necessity of adverse proceedings.

§ 350. In general. The Federal statute provides that when two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.[1]

For the purpose of determining an issue as to whether or not two veins unite in their dip below the surface in a certain portion of the mine, testimony may be given as to the condition and existence of the same lodes upon the surface or in the underground workings of the other portion of the same mine.[2]

Where three mining claims lie adjoining, side by side, and there are two veins or lodes, one having its apex in the southernmost claim, the other its apex within the middle claim, both dipping northward, and uniting beneath the claim lying fartherest north, the northernmost claim owners have no interest in the ore of such veins below the union, but the ore belongs to one or the other of the mines, within whose limits the veins have their apices, and it makes no difference to the northern claim owners that the middle mine was located upon a vein having its course east and west, or that for any other reason the middle claim owners cannot claim to follow the lode having its apex within its lines.[3]

[1] U. S. Rev. Stats., § 2336; 5 Fed. Stats. Ann., p. 50; 2 U. S. Comp. Stats. 1901, p. 1436, 17 Stats. at L., p. 96. See Little Josephine Min. Co. v. Fullerton, 58 Fed. Rep. 521, 7 C. C. A. 340, 17 Morr. Min. Rep. 664.

[2] Consol. Wyoming Min. Co. v. Champion Min. Co., 63 Fed. Rep. 540, 545, 18 Morr. Min. Rep. 113.

[3] Roxanna G. Mining & T. Co. v. Cone, 100 Fed. Rep. 168, 20 Morr. Min. Rep. 323.

§ 351. Necessity of adverse proceedings. Where veins unite on the strike, the priority thereto given by the provision of section two thousand three hundred and thirty-six of the United States Revised Statutes is lost by a failure to assert such right by adverse claim in proceedings for a patent by the junior locator, as such claim necessarily implies a conflict of locations on the surface. As to the union of veins on the dip, a failure to make adverse claim for such superior right by a senior locator, upon the application for a patent by a junior locator, does not conclude such right, as the fact of its existence may not be known, or it does arise without conflict upon the surface.[4]

The fact that such union occurs several hundred feet below the surface, and is not known at the time a patent is applied for, is not a basis for an adverse claim; and consequently the patent is not conclusive of the right, nor can ex parte evidence be used by the applicant, on obtaining the patent, upon a trial of an issue of priority arising between the owner of such patented claim and the owner of an adjoining claim, upon which issue the right to the mineral below the junction depended.[5]

[4] Lee v. Stahl, 13 Colo. 174, 22 Pac. Rep. 436, 16 Morr. Min. Rep. 152.
[5] Champion Min. Co. v. Consolidated Wyoming G. Min. Co., 75 Cal. 78, 16 Pac. Rep. 513, 16 Morr. Min. Rep. 145.

CHAPTER XXIX.

TOWN SITES.

§ 352. In general.
§ 353. Mode of establishing town sites. Scripping.
§ 354. Same. Under Federal statutes.
§ 355. Same. Surveying reservation into lots.
§ 356. Same. Filing plat of town site.
§ 357. Same. Extension of limits.
§ 358. Same. Entry of town authorities in trust for occupants.
§ 359. Same. Preference.
§ 360. Same. Entry under next preceding section.
§ 361. Same. Entry in proportion to number of inhabitants.
§ 362. Same. Conformity to legal subdivisions.
§ 363. Same. Alaska.
§ 364. Rights of mineral claimants.
§ 365. Same. Two classes of mining claims distinguished.
§ 366. Same. "Mine."
§ 367. Same. Future discovery.
§ 368. Same. "Valid mining claim or possession."
§ 369. Adverse claims and suits between town-site and mineral claimants.

§ 352. In general. The discovery of minerals on the public lands, especially in quantities and quality, such as will justify the development and consequent opening of mines, is almost invariably followed by a large settlement, not only of prospectors and miners, but also of other persons for purposes of trade and business, in the immediate neighborhood of the discovery, and the consequent organization of some form of local government for the protection of its members. One of the first steps usually taken is the establishment of a town site, and, of course, the first question to be considered and acted upon by the people is the mode of establishing the town site. Naturally, this gives rise to controversies between those occupying the land for purposes of trade, business, and residence, and those claiming, or desiring to occupy, the land for mining purposes. This chapter then will discuss briefly — 1. The mode of establishing town

sites; and 2. The rights of those claiming, or desiring to occupy, land within the limits of the town site for mining purposes.

§ 353. Mode of establishing town sites. Scripping. Probably the quickest mode of acquiring title to public lands for the purpose of establishing a town site is by scripping the land. Of course, extreme caution must be exercised to see that the scrip sought to be used for that purpose is applicable and without legal flaws. It must also be borne in mind that the land must be open to appropriation and purchase by means of scripping; that is, that the land must be non-mineral, and unappropriated and unoccupied.

§ 354. Same. Under Federal statutes. The Federal statutes set out at great length the mode of establishing town sites. Thus the first section of the statute[1] authorizes the President to reserve from the public lands, whether surveyed or unsurveyed, town sites "on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population."

§ 355. Same. Surveying reservation into lots. Another section[2] provides for a survey of the reservation into urban or suburban lots, their appraisement and sale; all under the direction of the Secretary of the Interior and the commissioner of the general land-office.

§ 356. Same. Filing plat of town site. Other sections[3] provide for filing a plat of the town site, stating in detail the matters to be shown and set forth on the plat, and the

[1] U. S. Rev. Stats., 2380; 6 Fed. Stats. Ann., p. 341; 12 Stats. at L., p. 754; 2 U. S. Comp. Stats. 1901, p. 1455.

[2] U. S. Rev. Stats., 2381; 6 Fed. Stats. Ann., p. 341; 12 Stats at L., p. 754; 2 U. S. Comp. Stats. 1901, p. 1455.

[3] U. S. Rev. Stats., 2382, 2384; 6 Fed. Stats. Ann., p. 341-343; 2 U. S. Stats. 1901, pp. 1455, 1456; 12 Stats. at L., pp. 343, 344. And see Jones v. Petaluma, 36 Cal. 230; Alemany v. Petaluma, 38 Cal. 553; King v. McAndrews, 111 Fed. Rep. 860, 50 C. C. A. 29.

offices in which the plat is to be filed. These sections also contain a provision for the sale of the lots.

§ 357. **Same. Extension of limits.** Another section[4] provides that when town sites are established on unsurveyed lands, it is lawful, after the extension thereto of the public surveys, to adjust the extension limits of the lands according to those lines, where it can be done without interfering with rights vested by sale; and that patents for all lots so disposed of shall issue as in ordinary cases.

§ 358. **Same. Entry by town authorities in trust for occupants.** It is provided in another section,[5] that whenever any portion of the public lands has been, or may be, settled upon and occupied as a town site, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town is incorporated, for the corporate authorities thereof, and if not incorporated, for the judge of the county court, for the county in which such town is situated, to enter, at the proper land-office, and at the minimum price, the land so settled and occupied, in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the state or territory in which the same may be situated.

The term "judge of the county court" for the county, employed in section two thousand three hundred and eighty-seven to designate the officer authorized to make township entry, under that section, as trustee for the several use and benefit of the occupants of the town site, embraces any presiding judicial officer of the court having general jurisdiction within the county; and where any one of several officers coming within the purview of the statute is designated by

[4] U. S. Rev. Stats., 2383; 6 Fed. Stats. Ann., 2383, p. 342; 13 Stats. at L., p. 344; 2 U. S. Comp. Stats. 1901, p. 1456.

[5] U. S. Rev. Stats., 2387; 6 Fed. Stats. Ann., p. 344; 14 Stats. at L., p. 541; 2 U. S. Comp. Stats. 1901, p. 1457.

the state legislature as the proper officer to assume the trust and make the entry, that designation is entitled to be recognized by the officers of the land-office.[6]

§ 359. Same. Preference. In an application to patent a town site, the preference to entry is given to the corporate authorities, represented by the trustees, and such proceedings cannot be anticipated and barred by the application of a county judge, whom the law has empowered to act for occupants and claimants, in towns that have no corporate authorities to act for them.[7]

§ 360. Same. Entry under next preceding section. The entry of the land provided for in section three hundred and fifty-nine shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a town site, shall be filed with the register of the proper land-office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States; but in any territory in which a land-office may not have been established, such declaratory statements may be filed with the surveyor-general of the surveying district in which the lands are situated, who shall transmit the same to the general land-office.[8] There is no requirement that town-site proof shall be made by persons not residents of the town, and such residence does not affect their competency to make such proof.[9]

§ 361. Same. Entry in proportion to number of inhabitants. By another section [10] it is provided that " if upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands

[6] Bena Town Site, 34 Land Dec. 24.

[7] Townsite of Riverton, 35 Land Dec. 323.

[8] U. S. Rev. Stats., 2388; 6 Fed. Stats. Ann., p. 350; 14 Stats. at L., p. 541; 2 U. S. Comp. Stats. 1901, p. 1458.

[9] Duluth v. Bena Town Site, 34 Land Dec. 708.

[10] U. S. Rev. Stats., 2389; 6 Fed. Stats. Ann., p. 350; 14 Stats. at L., p. 541; 2 U. S. Comp. Stats. 1901, p. 1458.

authorized by law; and where the inhabitants are in number one hundred and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred and less than one thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding one thousand two hundred and eighty acres; but for each additional thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed."

§ 362. **Same. Conformity to legal subdivisions.** Under the provision of section sixteen of the act of March 3, 1891, a town-site entry by an incorporated town may be made upon mineral lands of the United States, subject to the limitations and conditions prescribed to such an entry upon surveyed lands, even although the lands be mineral in character, and should, as to its exterior limits, be made in conformity to legal subdivisions, as required by section three.[11]

The provision of section two thousand three hundred and eighty-nine of the Revised Statutes that a town site "shall in its exterior limits be made in conformity to the legal subdivisions of the public lands authorized by law," is mandatory, and an entry which does not so conform cannot be allowed.[11a]

§ 363. **Same. Alaska.** The laws of the United States in relation to the establishment of town sites have been extended to Alaska.[12] And in 1904 the Secretary of the Interior promulgated a set of rules and regulations concerning the manner of acquiring a title to town sites on public lands in the district of Alaska.[13]

[11] Telluride Additional Town Site, 33 Land Dec. 543.

[11a] Secretary Garfield to the Commissioner of the General Land-Office, May 9, 1907. 35 Land Dec. 559.

[12] Sawyer v. Van Hook, 1 Alas. 108.

[13] Circular, 33 Land Dec. 163.

§ 364. **Rights of mineral claimants.** While the Federal statutes providing for town-site entries permit such entries by incorporated towns and cities on the mineral lands of the United States, yet they expressly provide that no title shall be acquired to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. And when mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots are subject to such recognized possession and the necessary use thereof;[14] and when entry has been made or patent issued for such town sites, the possessor of such mineral vein may enter and receive patent therefor and the surface-ground appertaining thereto, provided, however, that no entry can be made by the mineral-vein claimant for surface-ground where the owner or occupier of the surface-ground shall have had possession thereof before the inception of the title of the mineral-vein claimant.[15]

§ 365. **Same. Two classes of mining claims distinguished.** It will be observed that the statute prevents the town-site entry from carrying title to two classes of mining claims; that is to say, a "mine" and a "valid mining claim or possession held under existing law."[16]

§ 366. **Same. "Mine."** Land embraced within a town site on the public domain, when occupied, is not exempt from location or sale for mining purposes. This exemption is only from settlement and sale under pre-emption laws of the United States. Some of the most valuable mines in the

[14] This is the provision of § 16 of the act of March 3, 1891; 26 Stats. at L., p. 1101; 6 Fed. Stats. Ann., p. 352. It should perhaps be observed that this act, down to this point, is substantially the language of §§ 2386 and 2392 of the Revised Statutes. See 2 U. S. Comp. Stats., §§ 2386, 2392, pp. 1457-1459; 6 Fed. Stats. Ann., pp. 343, 351; 13 Stats. at L., p. 530; 14 Stats at L., p. 541.

[15] Act of March 3, 1891; 6 Fed. Stats. Ann., p. 352; 26 Stats. at L., p. 1101; 2 U. S. Comp. Stats. 1901, p. 1459.

[16] See Callahan v. James, 141 Cal. 291, 74 Pac. Rep. 853, where this distinction is discussed at some length.

country are within the limits of incorporated towns, which have grown up on what was, on its first settlement, part of the public domain; and many of such mines were located and patented after a regular municipal government had been established. And as to mining claims based on a valid discovery and a timely proper location, although within the limits of what may be termed the site of the settlement, or new town, the miner acquires as good a right as though his discovery was in the wilderness, removed from all settlements, and he is entitled to a patent for them.[17] As the court said in the case just cited, "The acts of Congress relating to town sites recognize the possession of mining claims within their limits, and forbid the acquisition of any mines of gold, silver, cinnabar, or copper within them under proceedings by which title to other lands there situated is secured, thus leaving the mineral deposits within the town sites open to exploration, and the land in which they are found, to occupation and purchase, in the same manner as such deposits are elsewhere explored possessed and the lands containing them are acquired. Whenever, therefore, mines are found in lands belonging to the United States, whether within or without town sites, they may be claimed and worked, providing existing rights of others, from prior occupation, are not interfered with." And the question whether or not there are rights thus interfered with, which should preclude a location of the miner and the issuance of a patent to the locator, or his successor in interest, is, when not subjected under the laws of Congress to the local tribunals, a matter properly cognizable by the land department, when application is made to it for a patent; and the inquiry thus presented necessarily involves a consideration of the character of the land to which title is sought, whether it be mineral, for which a patent may issue, or agricultural, for which a patent should be withheld, and also as to the citizenship of the applicant. And when minerals are found in lands belonging to the United States, although situated within a town site, they may nevertheless be located, pro-

[17] Steel v. St. Louis Smelt. & R. Co., 106 U. S. 447, bk. 27 L. ed. 226; 1 Sup. Ct. Rep. 389.

vided, of course, such location does not interfere with the rights of others under prior occupation.[18] And the rights of a locator under a location upon lands which are afterwards entered upon as a town site, and to which the locator, subsequent to the issuance of the town-site patent, secures a patent, are not affected by the issuance of the town-site patent. The rights of a mining claimant in such case have already attached when the town-site patent is issued, and the mining patent is the mere perfection of the right, originated by the location, to which it takes effect by relation.[19]

The transferee of lands in a town site, which was entered and patent therefor issued without knowledge that there were any valuable mineral lands within the town site, cannot be deprived, under the laws of the United States, of the premises purchased and occupied by him, because of a subsequent discovery of minerals in them and the issuance of a patent to the discoverer.[20]

§ 367. Same. Future discovery. In order to except mines or mineral lands from the operation of a town-site patent, it is not sufficient that the lands do in fact contain minerals, or even valuable minerals, when the town-site patent takes effect. But they must at that time be known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them; and if the lands are not known at that time to be so valuable for mining purposes, the fact that they have once been valuable, or are afterwards discovered to be still valuable, for such purposes, does not defeat or impair the title of persons claiming under the town-site patent.[21] As has been well

[18] Steel v. St. Louis Smelt. & R. Co., 106 U. S. 447, bk. 27 L. ed. 226; 1 Sup. Ct. Rep. 389. See also Davis v. Weibbold, 139 U. S. 507, bk. 35 L. ed. 238, 11 Sup. Ct. Rep. 628.

[19] Chambers v. Jones, 17 Mont. 156, 42 Pac. Rep. 758; Silver Bow M. & M. Co. v. Clark, 5 Mont. 378, 5 Pac. Rep. 570; Butte City Smoke-House Lode Cases, 6 Mont. 397, 12 Pac. Rep. 858.

[20] Davis v. Weibbold, 139 U. S. 507, bk. 35 L. ed. 238, 11 Sup. Ct. Rep. 628.

[21] Dower v. Richards, 151 U. S. 658, bk. 38 L. ed. 305; 14 Sup. Ct. Rep. 452, 17 Morr. Min. Rep. 704. See also Bonner v. Meikle, 82 Fed. Rep. 697, 705, 19 Morr. Min. Rep. 83; Carter v. Thompson, 65 Fed. Rep. 329, 18 Morr. Min. Rep. 134.

stated by the supreme court of the United States,[22] "It is to be borne in mind, also, that the object of the town-site act was to afford relief to the inhabitants of cities and towns upon the public lands, by giving title to the lands occupied by them, and thus induce them to erect suitable buildings for residence and business. Under such protection many towns have grown up on lands which, previously to the patent, were part of the public domain of the United States, with buildings of great value for residence, trade, and manufactures. It would in many instances be a great impediment to the progress of such towns if the titles to the lots occupied by their inhabitants were subject to be overthrown by a subsequent discovery of mineral deposits under their surface. If their title would not protect them against the discovery of mines in them, neither would it protect them against an invasion of their property for the purpose of exploring the mines. The temptation to such exploration would be according to the suspected extent of the minerals, and being thus subject to indiscriminate invasion, the land would be to one having the title poor and valueless, just in proportion to the supposed richness and abundance of its products. We do not think that any such results were contemplated by the act of Congress, or that any construction should be given to the provision in question which could lead to such results. Our conclusion, as already substantially stated, is, that Congress only intended to preserve existing rights to known mines of gold, silver, cinnabar, or copper, and to known mining claims and possessions, against any assertion of title to them by virtue of the conveyances received under the town-site act, and not to leave the titles of purchasers on the town sites to be disturbed by future discoveries."

It is only minerals which are known to exist, and mining claims and possessions lawfully existing, at the time of the issuance of the town-site patent, that are reserved from the operation of the patent so as to permit their exploration

[22] Davis v. Weibbold, 139 U. S. 507, 525, bk. 35 L. ed. 238, 11 Sup. Ct. Rep. 628.

and appropriation for mining purposes,[23] not such as are not known or undiscovered.

Indications of the existence of mineral in the claim at the date of entry, but not in sufficient quantity to indicate or justify any systematic or continuous prospecting or work on the claim, is not enough.[24]

§ 368. **Same. "Valid mining claim or possession."** Locations upon mineral lands of the United States, lawfully possessed and held under the mining laws, at the date of the town-site entry embracing these locations, are within the meaning of section sixteen of the act of March 3, 1891, "Any valid mining claim or possession held under existing law," and cannot be injuriously affected by the allowance of such entry; and the mineral claimant may, upon proper proceedings and proof, as in other cases, obtain a patent for his claim, notwithstanding the town-site entry, or the issuance of patent thereon.[25] A town-site patent, when issued, will not deprive the contestant, or any other person, of any rights existing at the time of town-site entry under any valid mining claim or possession so recognized, as aforesaid, within the patented area. All such rights are protected by the statute, in terms. Nor will a town-site patent deprive the land department of jurisdiction to issue patent for any such mining claim upon application therefor, supported by proper proofs, for the reason that the statute also provides that patent may be issued to the possessor of any such mining claim, after town-site patent has been issued. All rights of mineral claimants existing at the date of the town-site entry being thus reserved and fully protected by the

[23] **U. S.** Dower v. Richards, 151 U. S. 658, 661, bk. 38 L. ed. 305, 14 Sup. Ct. Rep. 452, 17 Morr. Min. Rep. 704; Larned v. Jenkins, 113 Fed. Rep. 634, 51 C. C. A. 344, 22 Morr. Min. Rep. 94.

Ariz. Blackmore v. Reilly, 2 Ariz. 442; 17 Pac. Rep. 72.

Mont. Talbott v. King, 6 Mont. 76; 9 Pac. Rep. 434.

[24] Harkrader v. Goldstein, 31 Land Dec. 87, in which the case of Goldstein v. Juno Town Site, 23 Land Dec. 417, was vacated and annulled because the evidence failed to show that the land embraced in the claim was known to be valuable for mineral at the time the town-site entry was made.

[25] Nome and Sinook Co. v. Town Site of Nome, 34 Land Dec. 276.

statutes, there would seem to be no necessity for a segregation, prior to the issuance of the town-site patent, for the purpose of excluding the same from the patent, of any mining claims surveyed, or unsurveyed, for which applications have not been filed at the date of town-site entry. All such claims, if subsisting and valid at the date aforesaid, may be carried to entry and patented upon proper proofs, showing that the mining laws have been complied with, and that the claims are within the protection of the statute, notwithstanding the town-site entry and patent, provided only that the mineral entry and patent must not embrace surface-ground "where the owner or occupier of the surface-ground" shall have had possession of the same before the inception of title of the mineral-vein claimant.[26] In the case, however, of a "valid mining claim or possession held under existing laws," which the statute expressly excepts from the title carried by a town-site entry, "it is immaterial whether the claim was known to contain minerals of sufficient value to justify exploration or not."[27]

§ 369. **Adverse claims and suits between town-site and mineral claimants.** As to whether or not the mining laws authorize or provide for adverse proceedings against an applicant for patent to mineral land by one claiming the same, or any part thereof, under the town-site laws, there seems to be some conflict of opinion between the land department and the courts. Secretary Lamar, in 1886, ruled that when land located was alleged to be valuable mineral land by the lode locators, and the required evidence thereof had been filed with their application for patent before the local land-office, it was incumbent upon the town-site claimants, if they proposed to assert title under their patent, to file the adverse claim provided for by the statute, and in the ensuing judicial proceeding to show the superi-

[26] Hulings v. Ward Town Site, 29 Land Dec. 21. See also Nome and Sinook Co. v. Town Site of Nome, 34 Land Dec. 102; Lalande v. Town Site of Saltese, 32 Land Dec. 211.

[27] So held by the California supreme court, speaking through Mr. Justice Shaw, in Callahan v. James, 141 Cal. 291, 74 Pac. Rep. 853.

ority of their right to it.[28] But in a more recent case decided by the land department, Secretary Hitchcock has held that inasmuch as the provisions of the Federal statutes relative to adverse claims contemplate proceedings to determine only the right of possession as between claimants of the same unpatented mineral lands, and not to decide controversies respecting the character of public lands, that is, whether they are mineral or non-mineral lands, and inasmuch as the town-site entry, and the patent thereto, could only embrace lands not known to be mineral at the time of entry, the town-site claimant would have no standing before the land department as an adverse claimant against the mineral claimant.[29] As was held in the case just cited, it would follow that any suit begun by the town-site claimant against the mineral claimant, based on an adverse claim, is not such a suit as is authorized by the Federal statute relative to adverse suits, and that no stay of the mineral claimant's proceedings for patent to await the result of that suit is authorized.

The supreme court of Wyoming, in a well-considered opinion,[30] has followed the land department, and held that the courts have no jurisdiction to entertain actions in support of adverse claims by town-site claimants against mineral claimants. As that court said, "The court has jurisdiction only where the suit is between adverse mining claimants to the same unpatented mineral land. The reason for this distinction is apparent. The entire disposal of the public lands of the United States, under the laws enacted by Congress, is placed in the land department of the government. This department is the court of last resort in determining questions of fact, between contesting claimants with respect to their rights in acquiring any of the public lands. The rule is universal, that when the question of the character of the land is in issue, it is one for the land department to decide, and not for the courts. We cannot con-

[28] Smoke House Lode, 4 Land Dec. 555.

[29] Ryan v. Granite Hill Min. & D. Co., 29 Land Dec. 522.

[30] Wright v. Town of Hartville, 13 Wyo. 497, 81 Pac. Rep. 649, 82 Id. 450.

ceive of a court determining the right of possession, as in the case at bar, between a town-site patentee and a mining claimant, without first arriving at a decision as to the character of the land involved."

The Federal district court for Alaska, on the other hand, has held that the owner of a town lot in Alaska, unpatented, may adverse an application for patent for a lode claim, and may maintain an action in a court of competent jurisdiction in support of such adverse.[31] In this case the court referred to, and in fact based its decision upon, another case, decided by Judge Hawley of the Federal court for the district of Nevada.[32] In the case referred to, a rather anomalous state of facts is presented. True, it was a contest between town-lot owners and a mineral claimant; and the suit was characterized as an adverse suit under the Federal statutes, but it appears as a matter of fact that the proceeding in the land-office was a protest, and nowhere in the opinion is it spoken of as an adverse, but always as a protest. Nor does the case seem to involve the right of a town-lot owner to adverse, unless by inference from the facts that the suit was called one in support of an adverse claim and that jurisdiction was taken by the court. Of course the lot-owners or the town-site owners could protest against the issuance of a patent to a mineral-vein claimant. But how an adverse suit, strictly speaking, could be based on a protest, is not clear. From these decisions it would seem that the true rule is, that a town-lot owner or town-site owner, as the case may be, cannot file in the land-office an adverse claim against a mineral-vein claimant and then institute a suit in support of that adverse claim, for the reason that an adverse suit, of necessity, will involve trying the question of the character of the land, and that is a question solely for the land department to determine, and not the courts.

[31] Young v. Goldsteen, 97 Fed. Rep. 303.
[32] Bonner v. Meikle, 82 Fed. Rep. 697, 19 Morr. Min. Rep. 83.

CHAPTER XXX.

EMINENT DOMAIN.

§ 370. Conflict of authorities.
§ 371. Statutes declaring mining public use.
§ 372. Same. In Utah.
§ 373. Same. In Nevada.
§ 374. Same. In California.
§ 375. Same. In Arizona.
§ 376. Same. In Colorado.

§ 370. Conflict of authorities. There appears to be an irreconcilable conflict as to what constitutes a public use. This, no doubt, is largely due to the fact that in many cases what would be a public use in one jurisdiction would not be such in another or different jurisdiction. Thus it has been almost uniformly held throughout the Pacific Coast states that the construction and operation of irrigating-ditches is a public use, which doctrine, when applied to the arid region, has been approved by the supreme court of the United States; whereas in Ohio, New York, Pennsylvania, and other states, where irrigation is not followed, and is practically unknown, and where, as that able jurist, Mr. Justice Hallett, once said in an irrigation suit, "the rain falls alike on the just and the unjust," it would undoubtedly be held not to be a public use. Therefore, what shall be considered a public use often depends somewhat upon the locality, the wants and necessities of the people, the conditions with which they are surrounded, and the nature and character of the natural resources of such locality, state, or commonwealth. And while it is for the legislature to determine, in the first instance, whether the use is a public use, and to provide the means of condemnation, yet the great weight of authority holds that the declaration of the legislature is not final, and that it is ultimately for the courts to determine whether a

particular use is public or not.[1] The general rule, however, seems to be that when the legislature has declared a use to be public, that declaration will be respected and followed by the courts, unless the act is clearly and palpably unconstitutional, or the necessity for the taking is plainly without reasonable foundation.[2] So, too, it is a well-established rule that legislative enactments are presumed to be constitutional, unless the contrary clearly appears.[3] The reason for the rule, when applied to the law of eminent domain, is very apparent, as there are some uses for which private property may be condemned, the public character of which is so plain that there is no room for argument; and, on the other hand, there are innumerable uses for which property may be and is used, the private character of which is equally clear and plain. And whenever the statute is in doubt, the court holds the statute constitutional.

§ 371. **Statutes declaring mining public use.** In several of the mining states, the legislatures have passed statutes in effect declaring mining a public utility, and giving the right of eminent domain in respect to the operation and working of mines. As will be seen, the most of those statutes have been held constitutional.

§ 372. **Same. In Utah,** the statute provides that the right of eminent domain may be exercised as to "roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping-places to facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries or mineral deposits; outlets, natural or otherwise, for the deposit or conduct of tailings, refuse, or water from mills, smelters, or other works for the reduction of ores, or from mines,

[1] Amador Queen Min. Co. v. Dewitt, 73 Cal. 482, 15 Pac. Rep. 74; Consolidated Channel Co. v. Central Pac. R. Co., 51 Cal. 269, 5 Morr. Min. Rep. 438.

[2] See Highland Boy Gold Min. Co. v. Strickley, 28 Utah 215, 78 Pac. Rep. 296.

[3] See, generally, for a discussion of this rule, Fletcher v. Peck, 6 Cranch U. S. 87, bk. 3 L. ed. 162; State ex rel. Wells v. Tingey, 24 Utah 225, 67 Pac. Rep. 33.

quarries or mineral deposits; mill-dams; natural-gas or oil-pipe lines, tanks, or reservoirs; also an occupancy in common by the owners or possessors of different mines, quarries, mineral deposits, mills, smelters, or other places for the reduction of ores, of any place for the flow, deposit or conduct of tailings or refuse matter."[4] A similar statute has been declared constitutional in a case decided in 1904.[5] In that case the court said: "The mining industry in this state is second in importance only to that of irrigation, and this court held . . . that the construction and operation of irrigation-ditches is a public use.[6] Counsel for appellants, in his brief, concedes 'that irrigation is a public use, and that the condemnation of lands for irrigation-ditches is for a public use'; and again he says, 'There is no person, I take it, of ordinary intelligence, that would assert or think for a moment that the system of irrigation, as adopted and used throughout this whole Western country, is not surely a public benefit and a public use.' . . . It being conceded, and this court having held, that the construction and operation of irrigating-ditches in this state is a public use (Nash v. Clark[6]), it follows that the construction of roads and tramways for the development of the mining industry is a public use, as the same line of reasoning that applies in support of the doctrine in the one case holds good in the other. Otherwise a party owning a few acres of farming-land, or only a few square rods for that matter, could invoke the law of eminent domain, and by condemnation proceedings acquire a right of way across his neighbor's land for an irrigation-ditch to convey water to his small holdings; whereas the owners of mines and of works for the reduction of ores, the operations of which furnish thousands of men in this state with employment at good wages, and to which the general prosperity of the state is largely due, would be denied the right to invoke this same rule of law in order to

[4] Laws 1907, ch. 114, § 1, amending § 3588, Rev. Stats. 1898.

[5] Highland Boy G. Min. Co. v. Strickley, 28 Utah 215, 78 Pac. Rep. 296.

[6] Nash v. Clark, 27 Utah 158, 75 Pac. Rep. 371, affirmed 198 U. S. 361, bk. 49 L. ed. 1085, 25 Sup. Ct. Rep. 676.

acquire, when necessary to the successful operation of their business, rights of way for the transportation of ores from the mines to the mills and smelters, and for the construction of tunnels for drainage and other purposes. And parties holding the title to ground necessary and suitable for these purposes, which, in many cases, except for such purposes, might be entirely worthless, would be clothed with power to demand and compel payment of an unconscionable price for their lands before parting with the title, or they could refuse, absolutely, to grant the easement required on any terms, and thereby in some cases cripple mining enterprises, or destroy them altogether. Such a policy would not only be inconsistent and unreasonable, but would greatly retard the development of one of the greatest natural resources of the state. We are therefore of the opinion, and so hold, that the construction and operation of roads and tramways for the development and working of mines is a public use." The decision in this case was affirmed by the supreme court of the United States.[7] That court said: "In the opinion of the legislature and the supreme court of Utah the public welfare of that state demands that aerial lines between the mines upon its mountain sides and the railways in the valleys below should not be made impossible by the refusal of a private owner to sell the right to cross his land. The constitution of the United States does not require us to say that they are wrong. If, as seems to be assumed in the brief for the defendant in error, the finding that the plaintiff is a carrier for itself and others means that the line is dedicated to carrying for whatever portion of the public may desire to use it, the foundation of the argument on the other side disappears."

§ 373. **Same. In Nevada.** By express statute in Nevada, "the production and reduction of ores are of vital necessity to the people of this state; are pursuits in which all are interested, and from which all derive a benefit; so the mining,

[7] Strickley v. Highland Boy G. Min. Co., 200 U. S. 527, bk. 50 L. ed. 581, 26 Sup. Ct. Rep. 301.

milling, smelting, or other reduction of ores are hereby declared to be for the public use, and the right of eminent domain may be exercised therefor." [8]

The first case [9] in which this statute was sought to be applied was a petition for a writ of mandamus to compel the respondent, as district judge, to hear a petition filed, alleging that petitioner desired to acquire a strip of land in possession of, and claimed by, one James Waddell; that it was necessary for petitioner to obtain this land, in order to transport the wood, lumber, timbers, and other materials to enable it to conduct and carry on its business of mining; and praying that respondent be compelled to appoint commissions to determine and assess the compensation to be paid for such land, and to make such orders as must be necessary or proper in pursuance of the provisions of the act. The respondent refused to act in the premises, on the ground that the act in question was unconstitutional and void; claiming that it was in direct violation of the provision of the constitution, which declares that no person shall be "deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured." The court sustained the constitutionality of the act, and, after an extended discussion of the interpretation of the term "public use," said: "In the light of these authorities, nearly all of which were decided prior to the adoption of our state constitution, I think it would be an unwarranted assumption upon our part to declare that the framers of the constitution did not intend to give to the term 'public use' the meaning of the public utility, benefit, and advantage, as construed in the decisions we have quoted. The reasons in favor of sustaining the act under consideration are certainly as strong as any that have been given in support of the mill-dam, or flowage acts, as well as some of

[8] Nev. Comp. L., §§ 283-300, where the proceedings are set out in detail.

[9] Dayton Min. Co. v. Seawell, 11 Nev. 394, 5 Morr. Min. Rep. 424.

the other objects heretofore mentioned. Mining is the greatest of the industrial pursuits in this state. All other interests are subservient to it. Our mountains are almost barren of timber, and our valley lands could never be made profitable for agricultural purposes except for the fact of a home market having been created by the mining developments in different sections of the state. The mining and milling interests give employment to many men, and the benefits derived from this business are distributed as much, and sometimes more, among the laboring classes than with the owners of the mines and mills. The mines are fixed by the laws of nature, and are often found in places almost inaccessible. For the purpose of successfully conducting and carrying on the business of 'mining, milling, smelting, or other reduction of ores,' it is necessary to erect hoisting-works, to build mills, to construct smelting-furnaces, to secure ample grounds for dumping waste rock and earth, and a road to and from the mine is always indispensable. The sites necessary for these purposes are oftentimes confined to certain fixed localities. Now, it so happens, or at least is liable to happen, that individuals, by securing a title to the barren lands adjacent to the mines, mills, or works, have it within their power, by unreasonably refusing to part with their lands for a just and fair compensation, which capital is always willing to give without litigation, to greatly embarrass if not entirely defeat the business of mining in such localities. In my opinion the mineral wealth of this state ought not to be left undeveloped for the want of any quantity of land actually necessary to enable the owner or owners of mines to conduct and carry on the business of mining. Nature has denied to this state many of the advantages which other states possess, but by way of compensation to her citizens, has placed at their doors the richest and most extensive silver deposits ever yet discovered. The present prosperity of the state is entirely due to the mining developments already made, and the entire people of the state are directly interested in having the future developments unobstructed by the obstinate

action of any individual or individuals." This decision, and the reasons given by the court, were affirmed in a later decision by the same court.[10]

§ 374. **Same. In California**, subdivision five of section one thousand two hundred and thirty-eight of the Code of Civil Procedure [11] provides that the right of eminent domain may be exercised for the construction of "roads, tunnels, ditches, flumes, pipes and dumping-places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines." But it has been held that, under this statute, a mine-owner cannot procure, by condemnation, lands belonging to others to serve as a site for a bed-rock flume to carry the dirt and gravel from his mine, and as a place to deposit tailings and refuse matter from his claims.[12] In this case it was contended by the counsel for the plaintiff that the statute referred to is a legislative declaration that the construction of ditches, flumes, and dumping-places for working mines is a public use, in behalf of which the right of eminent domain may be exercised; and they invoked the doctrine that the judgment of the legislature upon such questions is conclusive, and is not open to review by the judicial department of the government. The court said: "It would be difficult to suppose a case more completely within the exception stated, and in which the absence of all possible public interest in the purposes for which the land is sought to be condemned is more clear and palpable, than in the case at bar." In another case [13] plaintiffs commenced proceedings under this statute to condemn certain lands belonging to the defendant, for the purpose of a ditch then under process of construction by them. It was alleged in the

[10] Overman Silver Min. Co. v. Corcoran, 15 Nev. 147, 1 Morr. Min. Rep. 691. See also Byrnes v. Douglass, 83 Fed. Rep. 15, 27 C. C. A. 399, 19 Morr. Min. Rep. 96.

[11] **Kerr's Cyc. Code Civ. Proc. Cal.**, pp. 1717 et seq.

[12] Consolidated Channel Co. v. Central Pac. R. Co., 51 Cal. 269, 5 Morr. Min. Rep. 438. See also County of San Mateo v. Coburn, 130 Cal. 631, 63 Pac. Rep. 78, 621.

[13] Lorenz v. Jacob, 63 Cal. 73; Cummings v. Peters, 56 Cal. 593.

complaint that the plaintiffs were constructing and completing a ditch for the purpose of carrying water from a certain point to plaintiff's reservoir, and that the uses for which the water was intended and designed were mining and irrigation. The court below entered a judgment in conformity to the prayer of the complaint, and defendant appealed. The following were some of the findings: "That one of the uses for which the proposed ditch is intended is the sale and rental of water for mining and agricultural purposes. That the use to which plaintiffs intend to devote the proposed ditch is for the sale, rental, and distribution of water to the mining claims and agricultural land in said Red Hill Mining District, including mining and agricultural land belonging to said plaintiffs, and is not a purely private use." At the request of counsel for defendant, the following additional finding was filed by the court: "With the exception of plaintiffs' own mine the owners of the different mining claims and agricultural lands mentioned could be served with water by means of ditches already in existence, and have been so served with water in former years. The ditches so used have ample capacity to carry the waters of Connor's Creek, except in times of exceptionally high water. Some of these ditches have fallen into disuse or have been worked away, and with the exception of the Connor ditch, the Jacobs ditch, the Mackey ditch, and the Butcher ditch, none of these ditches have rights of water of any value, either for mining or irrigating purposes. To serve the various claims and agricultural lands with water through these old ditches by letting the water run down Connor's Creek would involve a great waste of water, unless purchasers would take it at all times, night and day." The conclusion of the court below was: "In conclusion, after a careful examination of the evidence offered, the following appears to be the true state of the case: Plaintiffs are the owners of the most valuable interest of any in the waters of Connor's Creek, which stream is the only one available for working the mines in the Red Hill Mining District. This water they have used for many years past

in working their own mines, occasionally renting some to others for mining or irrigating. Plaintiffs cannot work their mine to advantage by means of ditches now in existence, and rather than have their water become worthless, they propose to make a public use of it, in which use, as a part of the general public, they will be entitled to a share. The question is not free from difficulties; but in my judgment the statute should be liberally construed in a mining country; and if it appear that the intended use is a public one to a reasonable extent, the right of way should be granted." It was held that the findings were insufficient to show that the use for which the water was intended was a public use, it clearly appearing from the evidence that the main and substantial object of plaintiffs was to use the water in working their own mining claims, and that private property cannot be taken for such a purpose.

This statute was re-enacted in 1907.[14] What the purpose of the re-enactment of the statute was, in the face of the decisions by the supreme court in effect holding the statute unconstitutional, is not clear, unless with the hope that the supreme court would change its views as to its unconstitutionality. In a more recent case,[15] and one which seems to be the last expression of the supreme court of California, the plaintiffs sought to condemn a right of way through a tunnel under defendant's mining claim. The facts of the case, as they appeared in the complaint, may be briefly stated as follows: The plaintiff owned two mining claims in Amador County. Between these two claims was a high ridge of land, which was also a mining claim, and was owned by defendant. On one claim plaintiff had a quartz-mill, and in the other was a large amount of valuable gold-bearing ore. There was a tunnel, constructed by plaintiff and defendant, which extended from a point near plaintiff's quartz-mill, through and under defendant's claim to Murphy's gulch. Plaintiff was working one claim and transporting the ore taken therefrom through the tunnel to its

[14] See Stats. 1907, p. 742, **Kerr's Stats. and Amdts.**, p. 486.
[15] Amador Queen Min. Co. v. Dewitt, 73 Cal. 482, 15 Pac. Rep. 74.

mill; and without a right of way through the tunnel for the purpose of so transporting the ore, it could not continue to work or develop its said mine. The defendant, in 1882, obtained a patent from the United States for his mining claim, which contained, among other things, the following condition of sale: "That in the absence of necessary legislation by Congress, the legislature of California may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development." This condition of sale was inserted in the patent in pursuance of the provisions of section two thousand three hundred and thirty-eight of the Revised Statutes of the United States, which reads as follows: "As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any state or territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and these conditions shall be fully expressed in the patent." The prayer was, that "the damages which defendant will sustain by reason of a right of way granted to plaintiff through said tunnel for the purpose of working plaintiff's said mine in Murphy's gulch be assessed, and that on the payment of the damages so assessed by this honorable court to the defendant, a right of way for working and developing plaintiff's said mine in Murphy's gulch through said tunnel may be condemned by this honorable court," etc. The defendant filed a general demurrer to the complaint, which was sustained, and thereupon, the plaintiff declining to amend, judgment was entered in favor of defendant. It was admitted that there was no legislation by Congress providing rules for working mines, and none by the state, except the statute before referred to. It was contended on behalf of appellant that, under the above-quoted section of the Revised Statutes, a right of way through the defendant's mine was reserved by the United States, and that this right of way may be taken and used by any other miner, whenever it becomes necessary to use it in working his mine, upon such terms and conditions as the state legislature may have prescribed.

It was further contended that the provisions of the California statute constitute sufficient legislation by the state to meet the requirements of the case, and to justify the plaintiff in demanding the relief asked for. The court said: "We are satisfied that, under the provisions of the Code of Civil Procedure referred to, the plaintiff cannot have a right of way through defendant's mine condemned for its use in working its own mine. The mine of defendant is his private property, and it is clear that the plaintiff asks for the condemnation in order that it may appropriate a way through that property for its private use. This cannot be done."

§ 375. **Same. In Arizona**, the statute [16] provides that the right of eminent domain may be exercised in behalf of the following uses: "Roads, tunnels, ditches, flumes, pipes and dumping-places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common, by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines." It should perhaps be noted that this statute is in precisely the same language as the statute of California which has been declared unconstitutional. The Arizona statute, however, seems never to have come before the courts of that territory for construction; and while, ordinarily, the rule would probably be that as it is an adoption of the California statute, the construction of the California statute would also be adopted, it is not at all certain that the courts of that territory will follow the courts of California. Indeed, the Arizona supreme court, in one case,[17] seems to incline toward the rule laid down by the Nevada court.

§ 376. **Same. In Colorado**, prior to 1891, the right of a purely private party to condemn a right of way for a ditch to convey water to his lands for mining purposes was guar-

[16] See Ariz. Rev. Stats. 1901, § 2145, par. 5.

[17] **Compare**, in this connection, Oury v. Goodwin, 3 Ariz. 255, 272, 26 Pac. Rep. 376.

anteed by the constitution, and the manner of exercising the right was regulated by statute.[18] In one case,[19] however, it was held that while the constitution recognized the right to appropriate private property for private ways of necessity, it did not recognize any right for the construction upon and over private property of a private railroad. In this case the relator was the owner of several mining claims situated on Aspen Mountain, in Pitkin County; and, in order to facilitate the transportation of ores therefrom to certain sampling-works in the town of Aspen, known as the "Hewitt Sampler," laid out and constructed tramways from the mines to a common point in the vicinity, and laid out a main line extending from the point of convergence to the sampling-works. This main line crossed a parcel of land severally claimed by three persons; by two of them as mining locations, and by the third under a pre-emption location as agricultural land. The strip desired for the tramway was one hundred and ninety-three feet in length and thirty-three feet in width. Being unable to obtain the right of way over this tract from the several claimants, the relator filed a petition in the district court of Pitkin County praying that the strip described therein be condemned, under the eminent domain act, for the purpose mentioned, and that the petitioner be admitted into possession, pending the proceedings, upon depositing in the court a sum of money, to be fixed by the judge, sufficient to pay a reasonable compensation for the land when the same should be ascertained. Upon filing the petition, together with affidavits in support of its averments, a summons issued to the parties claiming the land, and the court entered a rule authorizing the relator to take possession, on depositing with the clerk of the court the sum of two hundred dollars. This sum was deposited, possession taken, and the construction of the tramway across the tract commenced before the return-

[18] See Downing v. More, 12 Colo. 316, 20 Pac. Rep. 766; Tripp v. Overocker, 7 Colo. 72, 1 Pac. Rep. 695.

[19] People ex rel. Aspen Min. & S. Co. v. District Court, 11 Colo. 147; 17 Pac. Rep. 298.

day named in the summons. A general demurrer to the petition on the part of the pre-emption claimant was subsequently filed, which was sustained by the court, and thereupon the rule for possession was vacated and set aside as to the said claimant, exceptions being reserved to the rulings. An appeal from the last-mentioned order was prayed for and denied.

In 1891, the Colorado legislature passed an act[20] which, in terms, provided that "any corporation formed for the purpose of constructing a road, ditch, reservoir, pipe line, bridge, ferry, tunnel, telegraph line, or railroad line, should have the authority to acquire any real estate necessary for its purposes in the manner provided by law, under the eminent domain act." In a recent case decided in that state,[21] a corporation organized under that statute instituted proceedings to condemn a tunnel right of way for tunnel purposes through a lode claim. According to the articles of incorporation, the petitioner was organized "to run, construct, work, operate, and maintain tunnels for mine development, drainage, prospecting, and other purposes; to demand, contract for, and receive royalties or other compensation for the use of such tunnel or tunnels, from any and all persons, associations, and corporations in any manner using same, or benefited thereby, in the drainage of properties operated by them; to excavate, drive, or otherwise construct crosscuts and branches from any such tunnel for mining, prospecting, development, and other purposes." It appeared that the purpose of the petitioner in constructing the tunnel was to furnish drainage for mines adjacent to its line; that "its portal is in Ouray County, but, as projected, will extend into the county of San Miguel, into a locality highly mineralized, where there are mines being successfully operated; that this tunnel, when completed, will cut the veins in these properties at a depth far below the present workings thereon; and that, if the owners of these properties desire to avail themselves of the facilities conferred by the tunnel, their

[20] Sess. Laws 1891, p. 98.

[21] Tanner v. Treasury T. M. & R. Co. (Colo., 1906), 83 Pac. Rep. 464.

mines can be drained thereby and waste and ore transported through such tunnel. It also appears that these mines are located at a high altitude, and that many of the inconveniences resulting from such location may be avoided by operations through the projected tunnel of petitioner."

The vital question in that case was, "whether or not the use of the property sought to be condemned will be public in its nature. As an aid in solving this question, we may consider the character of the business in which the petitioner proposes to engage through and by means of its tunnel. If this business is wholly for its benefit, then the use of the property sought to be appropriated would be private, while, on the other hand, if the business proposed to be carried on by petitioner through its tunnel is essentially for public benefit and advantage, then the use would be public." The court, in holding that such use was public, said: "In this state we have conditions to meet and resources to develop, which, in their nature, require the employment of new and appropriate means. This has opened a field for the prosecution of new enterprises. The mineral resources of the state are of prime importance. Generally, they can only be reached by sinking shafts to great depth, or running tunnels of great length. It appears from the testimony that the tunnel which petitioner purposes to run will cut the mountain at a great depth; that it will intersect numerous veins of mineral; that it will reach mines now being operated; that through this tunnel these mines, and others which may be developed along its line, can be operated if the owners should so desire; that it will drain these properties and furnish ventilation, if connection is made therewith; in short, that the owners of mining properties along the line of this tunnel and adjacent thereto may, if they so desire, secure a distinct benefit and advantage in the operation of their mines by availing themselves of the facilities which may be afforded by the tunnel of the petitioner. The general assembly has provided for the organization of companies for the purposes for which the petitioner was organized. It has provided that a corporation of this char-

acter may exercise the power of eminent domain in securing rights of way for its tunnel. It has evidently recognized that the business of a tunnel company may be for the benefit and advantage of the public, for we find that in designating what corporations may exercise the power of eminent domain, tunnel companies have been mentioned in connection with bridge, ferry, railroad, and other companies, whose business is unquestionably to serve the public. . . . For the development of the great mining resources of this state, tunnels of the character contemplated by petitioner are not only expedient, but necessary. The necessity of vesting corporations of the character of petitioner with the right to exercise the power of eminent domain is apparent; for, without this power, enterprises of the character contemplated by the petitioner could be thwarted and the development of the mining resources of the state prevented by those owning property crossing the line of a projected tunnel. The number who may avail themselves of the benefits of the tunnel will be limited, but this is merely the result of natural conditions arising from the character and location of mining properties. The use and benefit of the tunnel will be in common, and may be enjoyed by all whose properties are so located with reference thereto that they may avail themselves, if they so desire, of the opportunities thus afforded for the development and operation of their properties. The business in which petitioner will engage in affording these facilities is essentially for the benefit and advantage of such owners. For these reasons, we are of the opinion that the use of the property sought to be condemned by the petitioner is public."

CHAPTER XXXI.

GRUB-STAKE OR PROSPECTING CONTRACTS.

§ 377. Are peculiar to mining countries.
§ 378. Not necessarily in writing.
§ 379. Consideration.
§ 380. Enforceable, same as other contracts.
§ 381. Tenants in common.
§ 382. Qualified partnerships.
§ 383. Parties are trustees for each other.
§ 384. One partner may not locate for his own benefit a discovery made during life of contract.
§ 385. Must use reasonable diligence in prospecting.
§ 386. When no time limit fixed.
§ 387. Dissolve by mutual consent.
§ 388. Cannot claim interest if unable to carry out contract.
§ 389. Liability for debts.
§ 390. Resulting trust.

§ 377. **Are peculiar to mining countries.** Grub-stake or prospecting contracts are a peculiar kind of contract, common to mining countries, and exist where two persons enter into a common venture, one furnishing the "grub," — in other words, defraying the expenses, — and the other furnishing the labor, skill, or information in prospecting for or locating mineral. Such ventures are joint in character, and all discoveries inure to the benefit of both.[1]

§ 378. **Not necessarily in writing.** They are not within the statute of frauds, and need not necessarily be in writing.[2]

[1] Berry v. Woodburn, 107 Cal. 504, 40 Pac. Rep. 802; Cascaden v. Dunbar, 2 Alas. 408; Marks v. Gates, 2 Alas. 519.

[2] **Alas.** Cascaden v. Dunbar, 2 Alas. 408.

Cal. Morits v. Lavelle, 77 Cal. 10, 18 Pac. Rep. 863, 11 Am. St. Rep. 229, 16 Morr. Min. Rep. 236; Gore v. McBrayer, 18 Cal. 583, 1 Morr. Min. Rep. 645.

Colo. Meylette v. Brennan, 20 Colo. 242, 38 Pac. Rep. 75.

Idaho. Morrow v. Matthew, 10 Idaho 423, 79 Pac. Rep. 196.

Mont. Hirbour v. Reeding, 3 Mont. 13, 11 Morr. Min. Rep. 514.

In Nevada the same rule formerly prevailed.[3] But this doctrine has since been overruled, and the rule in that state now is, that the contract must be reduced to writing,[4] and, by an act of the legislature of Nevada, approved March 29, 1907, it is provided that all grub-stake contracts and prospecting agreements entered into after the passage of the act, affecting the title of mining or other locations in the state of Nevada, shall be void, except as to the parties thereto, unless the instrument shall have first been acknowledged before an officer competent to take acknowledgments, and recorded in the office of the county recorder of the county in which the instrument is made. The contract, being duly acknowledged and recorded, shall be prima facie evidence, in all courts of that state, in all cases wherein the title to mining and other locations, under the mining laws of that state, are in dispute.[5]

While this act provides fully for the manner of execution and recording of contracts entered into within the state, it is silent as to contracts entered into out of the state, but for the purpose of prospecting within the state. It is apparent that the act was not intended to cover this class of contracts, but in such case it might be better to record the contract in the office of the county recorder of the county in which the locations are made. Should the act, however, be held to apply to this latter class of contracts, then the recordation thereof in the county where the claim is located would be sufficient.

In Idaho,[5a] written contracts relating to prospecting and mining, or to the formation of a copartnership for that purpose, when signed by the parties thereto and indorsed by at least one witness, may be recorded in the office of the

N. M. Eberle v. Carmichael, 8 N. M. 169, 42 Pac. Rep. 95; s. c. 8 N. M. 696, 47 Pac. Rep. 717.

Wash. Raymond v. Johnson, 17 Wash. 232, 49 Pac. Rep. 492, 61 Am. St. Rep. 908, 19 Morr. Min. Rep. 56.

[3] Welland v. Huber, 8 Nev. 203, 13 Morr. Min. Rep. 363; Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617.

[4] Craw v. Wilson, 22 Nev. 385, 40 Pac. Rep. 1076, 18 Morr. Min. Rep. 244.

[5] Stats. Nev. 1907, p. 370.

[5a] Idaho Civ. Code 1901, § 2784; Sess. Laws 1899, p. 366.

county recorder of the county wherein it is proposed to prosecute the business of such copartnership, or where the property affected by such contract is situated, and such record shall be constructive notice to all persons of the matters contained in such contract or copartnership agreement.

In Oregon,[5b] all contracts of mining copartnership, commonly known as "grub-staking," must be in writing, and filed for record with the recorder of conveyances of the county wherein locations thereunder are made. Such contracts must contain the names of the parties thereto, and the duration thereof; otherwise they shall be null and void.

§ 379. **Consideration.** The consideration of the contract is made good by the discovery of mineral.[6]

§ 380. **Enforceable, same as other contracts.** The contract is enforceable to the same extent as other contracts, but the parties must prove, not only a clear and definite contract, but a compliance with the terms and conditions thereof, before they can assert rights thereunder.[7] It is essential to a right in the property that it shall be acquired by means of the grub-stake furnished, and pursuant to the contract.[8] But the contract cannot be enlarged to cover the purchase by the prospector of other mining claims with his own money.[9]

§ 381. **Tenants in common.** The parties hold as tenants in common.[10]

[5b] 2 Bellinger and Cotton's Ann. Codes and Stats., § 3985; Laws 1898, p. 18, § 11.

[6] Brown v. Bowman, 119 Ga. 153, 46 S. E. Rep. 410.

[7] Cisna v. Mallory, 84 Fed. Rep. 851, 19 Morr. Min. Rep. 227; Rice v. Rigley, 7 Idaho 115, 61 Pac. Rep. 290, 20 Morr. Min. Rep. 533; Morrow v. Matthew, 10 Idaho 423, 79 Pac. Rep. 196; Cascaden v. Dunbar, 2 Alas. 408; Copper River Min. Co. v. McClellan, 2 Alas. 134; Marks v. Gates, 2 Alas. 519.

[8] Prince v. Lamb, 128 Cal. 120, 60 Pac. Rep. 689, 20 Morr. Min. Rep. 419.

[9] Cisna v. Mallory, 84 Fed. Rep. 851, 19 Morr. Min. Rep. 227.

[10] Gore v. McBrayer, 18 Cal. 582, 1 Morr. Min. Rep. 645; Cascaden v. Dunbar, 2 Alas. 408; Marks v. Gates, 2 Alas. 519.

§ 382. **Qualified partnerships.** But the venture partakes of the character of a qualified partnership, upon which an action for an accounting may be based.[11] The contract and the partnership relation must, however, be in existence at the time of the discovery or location.[12]

§ 383. **Parties are trustees for each other.** The parties are trustees for each other, and must act in the highest good faith. If either locates the claim in his own name, he holds the title, as to the interest of his partner, in trust for him,[13] under an implied promise that he will convey to his partner his proper share, which, if he refuses to do, equity will enforce, by decreeing a conveyance;[14] but a conveyance will not be decreed unless the contract is clearly established in all its terms, and is equitable and just as to each party.[15]

[11] **Cal.** Berry v. Woodburn, 107 Cal. 504, 40 Pac. Rep. 802; Emery v. Mason, 75 Cal. 222, 16 Pac. Rep. 894; Harris v. Hillegass, 54 Cal. 463.

Colo. Lawrence v. Robinson, 4 Colo. 567, 12 Morr. Min. Rep. 387; Meylette v. Brennan, 20 Colo. 242, 38 Pac. Rep. 75.

Conn. Hoyt v. Smith, 23 Conn. 177, 60 Am. Dec. 632, 12 Morr. Min. Rep. 306; Hoyt v. Smith, 27 Conn. 63, 12 Morr. Min. Rep. 315.

Mont. Boucher v. Mulverhill, 1 Mont. 306, 12 Morr. Min. Rep. 350; Hirbour v. Reeding, 3 Mont. 13, 11 Morr. Min. Rep. 514.

Ohio. Eagle v. Bucher, 6 Ohio St. 295, 67 Am. Dec. 342, 12 Morr. Min. Rep. 330.

[12] Johnstone v. Robinson, 3 McC. C. C. 42, 16 Fed. Rep. 903, 12 Morr. Min. Rep. 396.

[13] **U. S.** Bank v. Bissell, 2 McC. C. C. 73, 4 Fed. Rep. 694, 11 Morr. Min. Rep. 546; Shea v. Nilima, 133 Fed. Rep. 209, 66 C. C. A. 263; Book v. Justice Min. Co., 58 Fed. Rep. 106, 17 Morr. Min. Rep. 617; Turner v. Sawyer, 150 U. S. 578, bk. 37 L. ed. 1189, 14 Sup. Ct. Rep. 192, 17 Morr. Min. Rep. 683.

Cal. Stewart v. Douglass, 148 Cal. 511, 83 Pac. Rep. 699; Moritz v. Lavelle, 77 Cal. 10, 18 Pac. Rep. 803, 11 Am. St. Rep. 229, 16 Morr. Min. Rep. 236; Settembre v. Putnam, 30 Cal. 490, 11 Morr. Min. Rep. 425.

Colo. Jennings v. Rickard, 10 Colo. 395, 15 Pac. Rep. 677, 15 Morr. Min. Rep. 624; Sears v. Collins, 5 Colo. 492, 12 Morr. Min. Rep. 400.

Mont. Hirbour v. Reeding, 3 Mont. 13, 11 Morr. Min. Rep. 514.

[14] Welland v. Huber, 8 Nev. 203, 13 Morr. Min. Rep. 363; Sears v. Collins, 5 Colo. 492, 12 Morr. Min. Rep. 400; Turner v. Sawyer, 150 U. S. 578, bk. 37 L. ed. 1189, 14 Sup. Ct. Rep. 192, 17 Morr. Min. Rep. 683. See Settembre v. Putnam, 30 Cal. 490, 11 Morr. Min. Rep. 425.

[15] Marks v. Gates, 2 Alas. 519; Marks v. Gates, C. C. A., 154 Fed. Rep. 481.

§ 384. **One partner may not locate for his own benefit a discovery made during life of contract.** If the prospector, during the life of the contract, discovers mineral which he does not locate, and the existence of which he does not disclose to his partner, he cannot, after the termination of the contract, locate the claim for his own benefit.[16] Nor can he procure the title to be vested in a third person;[17] nor clandestinely engage in any other business for his own benefit, unless the terms of the contract, either expressly or by implication, warrant it;[18] nor defray his expenses by bartering or trading, and then, without accounting for the profits, charge his partner for cash expended.[19] He may, however, be interested in other ventures, which, if they do not conflict with his contract with the outfitter, will inure to his own benefit.[20]

§ 385. **Must use reasonable diligence in prospecting.** The prospector must, in good faith, and in accordance with the usual and ordinary methods prevailing in the locality, exercise reasonable diligence and use reasonable exertions in prospecting for mineral.[21] And he must, within a reasonable time after the discovery, make the location.[22]

§ 386. **When no time limit fixed.** If the time of duration of the contract is not named, it may be terminated at the pleasure of either party, but rights already accrued are not affected thereby.[23]

[16] Jennings v. Rickard, 10 Colo. 395, 15 Pac. Rep. 677, 15 Morr. Min. Rep. 624.

[17] Delmonico v. Roudebush, 2 McC. C. C. 18, 5 Fed. Rep. 165, 3 Morr. Min. Rep. 195.

[18] Waring v. Cram, 1 Pars. Sel. Cas. (Pa.) 516, 12 Morr. Min. Rep. 280; Hoyt v. Smith, 23 Conn. 177, 60 Am. Dec. 632, 12 Morr. Min. Rep. 306.

[19] Burton v. Wookey, 6 Madd. 367, 11 Morr. Min. Rep. 342.

[20] Copper River Min. Co. v. McClellan, 2 Alas. 134.

[21] Skidmore v. Elkenberry, 53 Iowa 621, 15 Morr. Min. Rep. 360; Ray v. Hodge, 15 Oreg. 20, 13 Pac. Rep. 599, 15 Morr. Min. Rep. 371; Hanson v. Boothman, 13 East (Eng.) 22, 2 Morr. Min. Rep. 217. See Lockhart v. Ogden, 30 Cal. 547, 2 Morr. Min. Rep. 601; Lask v. Johnson, 55 Pa. St. 164, 93 Am. Dec. 732, 9 Morr. Min. Rep. 283.

[22] Murley v. Ennis, 2 Colo. 300, 12 Morr. Min. Rep. 360.

[23] Lawrence v. Robinson, 4 Colo. 567, 12 Morr. Min. Rep. 387; Crawshay v. Maule, 1 Swanst. Ch. (Eng.) 495, 11 Morr. Min. Rep. 223.

§ 387. Dissolve by mutual consent. And if the contract is dissolved by mutual consent, after the discovery of mineral, this being known to both parties, neither is obliged to complete locations for the benefit of the other.[24]

§ 388. Cannot claim interest if unable to carry out contract. If one party abandons the contract, or for any reason becomes unable to carry it out, he can claim no benefit from discoveries thereafter made;[25] nor in subsequent locations of discoveries of which he knew before the termination of the contract.[26]

§ 389. Liability for debts. Each partner is liable for the debts contracted in the prosecution of the venture.[27] And the outfitter is liable for, and must pay to the prospector, the reasonable expenses incurred by the latter in following out or working under the provisions of the contract.[28] But the prospector is not liable to the outfitter for unavoidable losses incurred in the proper pursuit of the objects of the venture.[29]

§ 390. Resulting trust. In the case of Stewart v. Douglass,[30] the supreme court of California held that a resulting trust existed in favor of one who had made a discovery of mineral upon vacant government land, but made no location thereof, and by letter had informed another person of such

[24] Page v. Summers, 70 Cal. 121, 12 Pac. Rep. 120, 15 Morr. Min. Rep. 617.

[25] Miller v. Butterfield, 79 Cal. 62, 21 Pac. Rep. 543, 17 Morr. Min. Rep. 222; McLaughlin v. Thompson, 2 Colo. App. 135, 29 Pac. Rep. 816; Murley v. Ennis, 2 Colo. 300, 12 Morr. Min. Rep. 360; Eagle v. Bucher, 6 Ohio St. 295, 67 Am. Dec. 342, 12 Morr. Min. Rep. 330; Marvey v. Coffin, 44 N. H. 563, 12 Morr. Min. Rep. 336; Rhea v. Vannoy, 1 Jones Eq. (N. C.) 282, 11 Morr. Min. Rep. 315; Rhea v. Lathem, 1 Jones Eq. (N. C.) 290, 11 Morr. Min. Rep. 321; Eubanks v. Petree, 1 Alas. 427; Roberts v. Date, 123 Fed. Rep. 238, 59 C. C. A. 242.

[26] Page v. Summers, 70 Cal. 121, 12 Pac. Rep. 120, 15 Morr. Min. Rep. 617.

[27] Bybee v. Hawkett, 12 Fed. Rep. 649, 11 Morr. Min. Rep. 594.

[28] Duff v. Maguire, 107 Mass. 87, 12 Morr. Min. Rep. 353.

[29] Pierce v. Bucklin, 7 Allen (Mass.) 261, 12 Morr. Min. Rep. 340.

[30] 118 Cal. 511, 83 Pac. Rep. 699.

discovery, and the person so written to notified the discoverer, by letter, that he would meet him within a short time, and asked the discoverer to keep his find from being made public until the arrival of the correspondent. The two persons then orally agreed that the claim should be located in their joint names, each to have an undivided half-interest in it. The discoverer then informed the proposed co-owner as to where the mineral could be found, and the latter went upon the premises and made a location in his own name, leaving the discoverer out. The court, speaking through Justice Shaw, said: "We are of the opinion that where one who has, by his own labor and at his own expense, discovered a mine, but has not made a location thereof under the mining laws, afterwards discloses to another the location of such mine, in consideration of and in reliance upon an agreement or understanding between them to the effect that the mine, when located, shall be the joint property of both, and where, in pursuance of such understanding, the further agreement is then made that the latter will locate the mine in their joint names, or for the benefit of both, so that each shall appear to be a half-owner thereof, the subsequent location of such mine by the latter in the name of himself alone, without the consent of the discoverer, will raise a resulting trust in favor of the discoverer with respect to the half-interest which was to belong to him under the agreement. The time and labor expended in making the discovery, coupled with the information given as to the situation of the mine, would be a sufficient consideration to support the agreement to make the location in their joint names, and to satisfy the demands of equity that there shall be an adequate and substantial consideration in order to raise a resulting trust. . . . Upon these facts a resulting trust would be created in favor of the plaintiff against the defendant Douglass and any third person taking with notice of plaintiff's rights, and such parties would be declared in equity to be trustees for the plaintiff, and would be compelled to hold such half-interest in trust for him and for his benefit."

CHAPTER XXXII.

MINING PARTNERSHIPS.

§ 391. Nature of mining partnership.
§ 392. Differ from ordinary partnerships.
§ 393. Member may deal with partnership for his own benefit.
§ 394. Stranger may be admitted without dissolving.
§ 395. When partnership exists.
§ 396. Powers of members limited.

§ 391. Nature of mining partnership. Mining partnerships, as distinct associations, with different rights attaching to those forming such partnerships from those attaching to members of trading partnerships, are in existence in all mining communities and mining countries. As Judge Field has said, "Without them, successful mining would be attended with difficulties and embarrassments much greater than at present."[1] And, quoting from an earlier California case,[2] "'Whatever may be the rights and liabilities of tenants in common of a mine not being worked, it is clear that where the several owners unite and co-operate in working the mine, then a new relation exists between them, and, to a certain extent, they are governed by the rules relating to partnerships. They form what is termed a mining partnership, which is governed by many of the rules relating to ordinary partnerships, but which has also some rules peculiar to itself — one of which is that one person may convey his interest in the mine and business, without dissolving the partnership.' The same doctrine is asserted in numerous other cases, not only in that court, but in the courts of England. Associations for working mines are generally composed of a greater number of persons than ordinary trading partnerships; and it was early seen that the continuous working of a mine, which is essential to its successful development, would be

[1] Kahn v. Central Smelt. Co., 102 U. S. 645, bk. 26 L. ed. 267, 11 Morr. Min. Rep. 540-545.
[2] Skillman v. Lachman, 23 Cal. 203, 11 Morr. Min. Rep. 381.

impossible, or at least attended with great difficulties, if an association was to be dissolved by the death or bankruptcy of one of its members, or the assignment of his interest. A different rule from that which governs the relations of members of a trading partnership to each other was therefore recognized as applicable to the relation to each other of members of a mining association." [3]

§ 392. **Differ from ordinary partnerships.** The delectus personæ, which is essential to constitute an ordinary partnership, has no place in these mining associations.[3a]

§ 393. **Member may deal with partnership for his own benefit.** One member of a mining partnership may purchase an interest or interests in the mining property belonging to the partnership, or an interest in other mines, for his own benefit, without being obliged to account to the partnership for the property, and without the knowledge or consent of his associates." [3b]

§ 394. **Stranger may be admitted without dissolving.** As the right of selection of persons does not exist in mining partnerships, the members of the association have no right to object to the admission of a stranger into the partnership, who buys the share of one of the associates, and no relation of trust is violated by the sale or assignment of one partner to a stranger, or to his associate, of his share in the property of the association.[4]

§ 395. **When partnership exists.** A mining partnership exists where several owners of a mine co-operate in working

[3] Kahn v. Central Smelt. Co., 102 U. S. 645, bk. 26 L. ed. 267, 11 Morr. Min. Rep. 540-545; Duryea v. Burt, 28 Cal. 569, 11 Morr. Min. Rep. 395; Taylor v. Castle, 42 Cal. 367, 11 Morr. Min. Rep. 484; Bissell v. Foss, 114 U. S. 252, bk. 29 L. ed. 129; Fereday v. Wightwick, 11 Morr. Min. Rep. 248, 1 Tamlyn 250.

[3a] Kimberly v. Arms, 129 U. S. 512, bk. 32 L. ed. 764.

[3b] Bissell v. Foss, 114 U. S. 252, bk. 29 L. ed. 129; Kimberly v. Arms, 129 U. S. 512, bk. 32 L. ed. 770.

[4] Nisbet v. Nash, 52 Cal. 540, 11 Morr. Min. Rep. 531; Taylor v. Castle, 42 Cal. 367, 11 Morr. Min. Rep. 484; Charles v. Eshelman, 5 Colo. 111, 2 Morr. Min. Rep. 69.

the property, and this relation is governed by many of the rules relating to ordinary partnerships, but we understand that the weight of authority is that a mining partnership exists even where the members of a partnership do not own the property; in other words, that a mining partnership can exist as well where the parties have an interest merely in the working of a mine or the carrying on of mining operations, as where they own the mine itself.

The supreme court of Colorado, in Mandell v. Parks,[5] has so held, referring to an earlier decision of the same court,[6] in which case the court held that "a mining partnership is held to exist where several owners of a mine cooperate in the working of a mine." The court said that they believed that the court referred only to the case before it, and that it did not intend to hold that in order to create the existence of a mining partnership the partners must necessarily be the owners of a mine; the court saying, "Indeed, in cases where the question of a mining partnership first arose in English courts, it was doubted whether the joint, or joint and several, owners of mines, who combined to realize and enjoy the profits of the estate under a general system of management, should be considered other than joint tenants, or tenants in common of the land, not subject to the laws of partnership; while, on the other hand, a combination for the working of mines merely, or as a paramount object, and trading and dealing in the products, would constitute a partnership for such purposes. But these views were subsequently modified, so that for many years both English and American authorities have held that cotenant owners, as well as lessees or parties having only an equitable interest in the property, or holding under license to work or develop, or where the owner furnishes the mine and another the capital and labor under an agreement to share the profits of the mine jointly, in all such cases there may be a partnership for mining purposes"; citing Rockwell on Mines[7] and Skillman v. Lachman,[8] and, continuing,

[5] 7 Colo. 128, 132, 2 Pac. Rep. 212, 15 Morr. Min. Rep. 569.
[6] Charles v. Eshelman, 5 Colo. 107, 2 Morr. Min. Rep. 69.
[7] Ch. 5.
[8] 23 Cal. 198, 11 Morr. Min. Rep. 381.

saying, "Whether partnership exists, is a question of fact; what a partnership is, is a question of law."[9]

§ 396. **Powers of members limited.** A mining partner has no power to bind his associates by engagements to other persons to the extent that a member of a trading or commercial firm may do; for instance, it has been held that the law does not imply authority in a member of a mining partnership to execute a promissory note or to draw or accept a bill of exchange in the name of the firm; that the powers of members and managers of such companies are limited to the performance of such acts in the name of the partnership as may be necessary to the transaction of its usual business. A mining partner who claims exemption from the general law of partnerships must show his case to be within some of those exceptions.[10]

The reason assigned for the distinction between ordinary partnerships and mining partnerships, and for limiting the powers of partners in mining partnerships, is, that a mining partnership is not founded on the delectus personæ; whereas, a commercial partnership is. New members can come into a mining partnership without the consent and against the wishes of the other members of the association, and it would be unjust, under such circumstances, to subject the copartners to personal liability, not authorized by them, but contracted perhaps by those who became members against their express wishes; so that the powers of members and managers of mining partnerships are thus limited to a much greater extent than members of a trading company.[11] Partnerships growing out of grub-stake and prospecting contracts have been discussed in a previous chapter.[12]

[9] Mandell v. Parks, 7 Colo. 128, 132, 2 Pac. Rep. 212, 15 Morr. Min. Rep. 569; Higgins v. Armstrong, 9 Colo. 46; Prince v. Lamb, 128 Cal. 127, 60 Pac. Rep. 689, 20 Morr. Min. Rep. 423.

[10] Dellapiazza v. Foley, 112 Cal. 383, 44 Pac. Rep. 727.

[11] Duryea v. Burt, 28 Cal. 569, 11 Morr. Min. Rep. 395; Jones v. Clark, 42 Cal. 193, 11 Morr. Min. Rep. 473; Stuart v. Adams, 89 Cal. 370, 26 Pac. Rep. 970; Charles v. Eshelman, 5 Colo. 107, 2 Morr. Min. Rep. 69.

[12] See ante, ch. XXXI.

CHAPTER XXXIII.

ESTATES OF DECEASED OR INCOMPETENT MINERS AND INFANTS.

§ 397. Summary proceedings to sell.
§ 398. Same. Mode of.
§ 399. Same. Optional contracts to sell.
§ 400. Same. Proceedings not subject to usual probate laws.

§ 397. Summary proceedings to sell. Summary proceedings for the sale of mines, or interest in mines or in mining companies, owned by decedents, may be had in Arizona,[1] California,[2] Idaho,[3] Montana,[4] Utah,[4a] and Wyoming.[5]

§ 398. Same. Mode of. The sale is had on a petition filed, after the filing of the inventory, by either the executor, administrator, an heir at law, a creditor, a partner, or a member of a mining company or corporation in which the interest or shares are held by the estate, setting forth that the estate is in course of administration, a particular description of the mining property proposed to be sold, its condition and situation, and the reasons why the sale is desired. Notice of the hearing of the petition is given under the order of the court having jurisdiction of the estate, for the time specified by the law of the state in which the property is situated, directing all interested persons to appear at a designated day and show cause why the mining property should not be sold. On the day appointed, proof being made of the service of the notice and allegations of the petition, the sale is ordered in accordance with the provisions of the law of the particular jurisdiction in which

[1] Rev. Stats. Ariz. 1901, §§ 1772, 1773, 1774, 1775, 1776.
[2] C. C. P., §§ 1529, 1530, 1531, 1532, 1533, **3 Kerr's Cyc. Codes Cal.**, pp. 1997 to 1999.
[3] C. C. P., §§ 4166, 4167, 4168, 4169, 4170.
[4] C. C. P., §§ 2660, 2661, 2662, 2663, 2664.
[4a] Laws 1903, p. 9.
[5] Rev. Stats., §§ 4776, 4777, 4778, 4779, 4780.

the property is situated. Thereafter the proceedings for the sale, and the notice, report, and confirmation thereof, must be in accordance with the provisions of the law regulating sales of other property of estates.

In Nevada,[6] any person, company, or corporation engaged in mining, milling, smelting, or other reduction of ores, may, on a petition to the district court of the county where the property is situated, acquire any real estate, or any right, title, interest, or claim therein or thereto, necessary for any of the purposes of such business. And[7] if it shall become necessary, for any of the purposes mentioned in the act, for the parties seeking to acquire any real estate, or any right, title, or interest therein, which is the property of an infant, idiot, or insane person, the guardian, executor, or administrator, as the case may be, shall be subject to process, judgment, and decree, as in said act provided for persons of full age or capable of contracting, or such guardian, executor, or administrator may, without process, judgment, or decree, sell and convey the property in question to the petitioner; but the sale shall not be valid for any purpose until approved by the judge of the district court of the county where the real estate is situated, who shall examine such conveyance, and if just and proper, approve the same, and thereupon the conveyance shall have the same effect for the purposes in the act mentioned, as if executed by persons competent to convey lands in their own name.

In Idaho,[8] if the decedent was not, at the time of his death, a citizen of the state, the probate court of any county in the state in which such mining interests are situate, may, upon petition of an heir, or of a co-owner or a mining partner, or of any person having an interest in such mining property, appoint an administrator, after which creditors may prove their claims within such time as the court may order. If the decedent has no creditors in the state, or when deemed

[6] Cutting's Comp. Laws, § 284.
[7] Cutting's Comp. Laws, § 297.
[8] C. C. P., §§ 4166, 4170.

best by the court, the foreign administrator of such decedent may file certified copies of his authority to represent decedent, after which he has all the authority of an administrator appointed under the laws of the state.

§ 399. **Same. Optional contracts to sell.** In Arizona,[9] optional contracts or bonds for the sale of the interest of a decedent, or of an infant, insane, or incompetent person, in mining property may be entered into by the executor, administrator, or guardian, when it is deemed for the best interest of the estate, on a petition to the probate court of the county where the mining property is situated, setting forth the name, age, and residence of the infant, insane, or incompetent person, or the decedent, and the proceedings had on the petition for the appointment of the executor, administrator, or guardian, a description of property, the appraised value thereof, and the terms and conditions of such contemplated option or bond, and the reasons showing the benefits to accrue to the estate if the option is executed. At least ten days' notice by posting in three designated public places in the county previous to the hearing must be given, and if on the hearing it appear that it is to the interest of the estate to enter into such contract, a decree is given authorizing the executor, administrator, or guardian to enter into such contract, and upon the fulfilment of the terms and conditions of such contract by the person proposing to purchase the property, in the time and manner specified in the contract, the executor, administrator, or guardian shall at once convey by deed all the right, title, and interest in and to the mining property that was in the decedent, or is in the insane or incompetent person or infant at the time of the delivery of such deed; the recitals in the deed shall be prima facie evidence of the regularity of all the proceedings prior to the delivery thereof, and upon the delivery of the deed, the executor, administrator, or guardian shall at once report to the court his acts in the premises, and thereupon a decree confirming the sale shall be entered. If

[9] Rev. Stats., §§ 2013, 2014, 2015, 2016, 2017.

the contract has not been complied with in the time named, the petitioner shall so report, and the court may, if desirable, extend the time of performance, or it may enter a decree forbidding such performance, and the contract shall thereupon be at an end, and all money which may have been paid thereon shall be forfeited to said estate. While in Idaho [10] the administrator may, in lieu of an order authorizing him to sell the property, be authorized to bond or contract for the sale of the mines, and to execute and place in escrow a deed of conveyance, to be delivered on compliance by the proposed purchaser with the terms of the bond or option.

In Utah,[11] when all, or any portion, of the estate of the decedent, or of the ward under guardianship, consists of mining properties or interests therein, the administrator or executor of the decedent, or the guardian of the mine, may petition the court having jurisdiction of the estate for leave to lease the mining property, with an option to the lessee to purchase the same, and if, upon the hearing, it appears that it will be for the best interests of the estate, the court may order the leasing of so much of the estate as shall be designated in the order, with an option to the lessee to purchase the same within a specified time at a stipulated price, and thereupon the lease may be executed, containing such option. If the lessee complies with the terms of the lease, accepts the option, and tenders the stipulated price, he shall be entitled to a deed for the property leased, but no title shall pass until the acceptance of the option, and the deed executed pursuant thereto, has been reported to and approved by the court.

§ 400. **Same. Proceedings not subject to usual probate laws.** These proceedings do not come within the provisions of the usual probate laws governing the sale of estates;[12] but the jurisdictional facts required by the provisions of the various laws must be shown by a verified petition with as

[10] C. C. P., § 4170.
[11] Laws 1903, p. 9.
[12] Smith v. Biscailuz, 83 Cal. 344, 349, 21 Pac. Rep. 15, 23 Id. 314.

much particularity as is required in a petition for the sale of other property of the estate;[13] and in California before a sale can be had under these proceedings it must affirmatively appear that the mining property is actually operated as a mine.[14]

[13] Estate of Boland, 55 Cal. 310.
[14] Estate of Byrne, 112 Cal. 176, 179, 44 Pac. Rep. 467.

CHAPTER XXXIV.

PARTITION

§ 401. Mining claims may be partitioned.
§ 402. Same. Lode claims.
§ 403. Same. Character of title does not affect.
§ 404. Same. Agreement not to partition null.

§ 401. Mining claims may be partitioned. A mining claim may be partitioned, whether patented or unpatented, between cotenants, as other real property may be partitioned. The supreme court of the state of California has said, "Although the ultimate title in fee in our public mineral lands is vested in the United States, yet, as between individuals, all transactions and all rights, interests, and estates in the mines are treated as being an estate in fee, and as a distinct and vested right of property in the claimant or claimants thereof, founded upon their possession or appropriation of the land containing the mine. They are treated, as between themselves and all persons but the United States, as the owners of the land and the mines therein; and as such, where the land or the mine is claimed by several, as joint tenants, tenants in common, or as coparceners, or even as partners, such several interests or estates are in the nature of an estate of inheritance, and liable to be partitioned between the several claimants, the same as other real property." [1]

§ 402. Same. Lode claims. In some cases it may be practical to partition placer mining claims or bodies of coal-land, but with lode claims it seems to us that it would be almost impossible for a court to make a fair and equitable division of the property, and, while the law permits the court to partition mining property, as hereinabove men-

[1] Hughes v. Devlin, 23 Cal. 501, 507, 12 Morr. Min. Rep. 242, 245; Nisbet v. Nash, 52 Cal. 540, 11 Morr. Min. Rep. 531, 539.

tioned, it is seldom that the courts will authorize a partition of a mining claim, especially if it is a quartz or lode mine.[2]

§ 403. **Same. Character of title does not affect.** And it is immaterial whether the party asking for partition has a legal or only an equitable title in the mining property sought to be partitioned. In either case he is substantially entitled to the same relief.[3]

§ 404. **Same. Agreement not to partition null.** Where owners of a mining claim entered into a stipulation providing that there should be no partition proceedings without the written consent of all the parties to the agreement, this agreement was held null and void, as an unreasonable restraint upon alienation of property, and upon the right of each party to have partition and the use and enjoyment of his interest in severalty.[4]

[2] Conant et al. v. Smith et al., 1 Aik. (Vt.) 67, 11 Morr. Min. Rep. 200; Paul v. Cragnaz, 25 Nev. 315, 59 Pac. Rep. 857.

[3] Royston v. Miller et al. (C. C., Dist. of Nev.), 76 Fed. Rep. 50; 18 Morr. Min. Rep. 418, 431.

[4] Haeussler v. Missouri Iron Co., 110 Mo. 188, 19 S. W. Rep. 75, 17 Morr. Min. Rep. 458, 463.

CHAPTER XXXV.

MISCELLANEOUS.

§ 405. California débris commission.
§ 406. Mechanics' liens.
§ 407. Hawaiian Islands.
§ 408. Philippine Islands.
§ 409. Porto Rico.

§ 405. California débris commission. In 1893, Congress passed what is commonly known as the débris commission act, providing for the control of hydraulic mining in California.[1] The act is local to that state. Section thirteen of said act was amended in 1907.[2] This statute has been held constitutional and its provisions mandatory.[3]

§ 406. Mechanics' liens. The laws of most of the states and territories provide for the protection of the laborer, mechanic, and material-man, by giving them a lien upon the premises upon which they may work or furnish material for, and, usually, this includes work performed upon or materials furnished for mining property. These laws vary more or less, and the scope of this work will not permit setting forth the rights of the miner in all of the states; our observation is, that most of these statutes covering this subject are more or less difficult of construction, and we would advise the miner, if he wishes to protect himself, to consult an attorney before taking action.[3a]

§ 407. Hawaiian Islands. Congress having provided that the laws of Hawaii pertaining to public lands should remain

[1] 5 Fed. Stats. Ann., pp. 61-69; 27 Stats. at L., p. 507; U. S. Comp. Stats. 1901, pp. 3553-3562.

[2] Suppl. Fed. Stats. Ann. 1907, p. 379; 34 Stats. at L. 1901. This act is set out in full in pt. II, post, ch. III.

[3] North Bloomfield Gravel Min. Co. v. United States (C. C. A.), 88 Fed. Rep. 664.

[3a] See Bloom on Mechanics' Liens, passim.

in force until otherwise provided, the act having been passed on April 30, 1900, and Congress, up to this time, not having made any other or different provisions pertaining to lands in these islands, there is no Federal legislation in force or operative in the islands, and the laws of Hawaii, in the matter of execution, issuance of patent, and titles to land are still in force. Thus a system differing from that provided by the Revised Statutes of the United States exists in the territory of Hawaii, and the Interior Department has no control over the issuance or execution of patents for lands in these islands.[4] Our information is, that as yet little or nothing has been discovered in the way of precious metals upon any of these islands. The reason, as given by geologists, is, that, the formation being of comparatively recent volcanic origin, they are practically barren of these metals.

§ 408. **Philippine Islands.** The Department of the Interior has no jurisdiction over mineral lands in the Philippine Islands. July 1, 1902, Congress enacted a mining code for the location and patenting of mining property in these islands.[5] The provisions of these acts of Congress are, in many respects, similar to the general Federal mining law, the most notable exception being that there are no extralateral rights arising out of lode locations. This statute, with the amendments, is printed in full in Part II.[6] By the act of Congress, February 6, 1905, this mining code was extensively amended.[7]

§ 409. **Porto Rico.** Our Interior Department has no control over the public lands in the island of Porto Rico. The act of Congress of April 12, 1900 (§ 13), provides, among other things, "that all property which may have been acquired in Porto Rico by the United States under the concession of Spain in said treaty of peace in any . . . mines,

[4] Hawaii Land Patents, act of April 30, 1900, 30 Land Dec. 295; 3 Fed. Stats. Ann., p. 202, § 73; 31 Stats. at L., p. 154.

[5] 5 Fed. Stats. Ann., pp. 724-735; 32 Stats. at L., pp. 697-706.

[6] See post, Pt. II, ch. I, p. 321.

[7] 10 Fed. Stats. Ann., pp. 267-273; 33 Stats. at L., pp. 692-697.

or minerals under the surface of private lands, and all property which at the time of the concession belonged, under the laws of Spain then in force, . . . is hereby placed under the control of the government established by this act to be administered for the benefit of the people of Porto Rico; and the legislative assembly hereby created shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters." By section fourteen of the act it is provided that the statutory laws of the United States not locally inapplicable, as specially provided in the act, shall have the same force and effect in Porto Rico as in the United States. The effect of the act is to place all mines and mineral lands under the control of the local government, to be administered for the benefit of the people of Porto Rico, under the control of the local legislative assembly.[8]

[8] 5 Fed. Stats. Ann., p. 767; 31 Stats. at L., p. 80.

Part II.

STATUTES, UNITED STATES LAND-OFFICE RULES AND REGULATIONS, FEES, RULES OF PRACTICE.

CHAPTER I.

FEDERAL STATUTES. GENERALLY.

§ 410. Mineral lands reserved.
§ 411. Mineral lands open to purchase by citizens.
§ 412. Length of mining claims upon veins or lodes.
§ 413. Proof of citizenship.
§ 414. Affidavit of citizenship, before whom made.
§ 415. Locators' rights of possession and enjoyment.
§ 416. Owners of tunnels, rights of.
§ 417. Regulations made by miners.
§ 418. Assessment required for oil claims.
§ 419. Expenditure of money on tunnels.
§ 420. Soldiers and sailors in war with Spain relieved from assessment-work.
§ 421. Notice of enlistment to be given.
§ 422. Co-owners of claims not relieved from proportion of work.
§ 423. Patents for mineral lands. How obtained.
§ 424. Adverse claim. Proceedings on.
§ 425. Same. Findings by jury. Costs.
§ 426. Same. Oath of claimant. Before whom made.
§ 427. Description of vein or lode claims on surveyed and unsurveyed lands.
§ 428. Pending applications. Existing rights.
§ 429. Conformity of placer claims to surveys. Limit of.
§ 430. Subdivisions of ten-acre tracts. Maximum of placer locations.
§ 431. Conformity of placer claims to surveys. Limitation of claims.
§ 432. What evidence of possession, etc., to establish a right to a patent.

§ 433. Proceedings for patent for placer claims, etc.
§ 434. Entry of building-stone lands under placer mining laws.
§ 435. Entry of petroleum or other mineral-oil lands under placer mining laws.
§ 436. Saline-lands. To be located as placer claims, but limiting one location for each person.
§ 437. Same. Utah owns salt-lands within the state.
§ 438. Surveyor-general to appoint surveyors of mining claims, etc.
§ 439. Verification of affidavits, etc.
§ 440. Where veins intersect, etc.
§ 441. Patents for non-mineral lands, etc. Mill sites.
§ 442. What condition of sale may be made by local legislature.
§ 443. Vested rights to use of water for mining, etc. Right of way for canals.
§ 444. Patents, pre-emptions, and homesteads subject to vested and accrued water rights.
§ 445. Mineral lands in which no valuable mines are discovered, open to homesteads.
§ 446. Mineral lands, how set apart as agricultural lands.
§ 447. Additional land districts and officers. Power of the President to provide.
§ 448. Provisions of the statute not to affect certain rights.
§ 449. Mineral lands in certain states excepted.
§ 450. Mineral lands in Missouri and Kansas. Disposal of, as agricultural lands.
§ 451. Mineral lands in Alabama. Disposal of, as agricultural lands.
§ 452. Grants of lands to states or corporations not to include mineral lands.
§ 453. Indian reservations.
§ 454. United States statutes for the acquirement of coal-lands. Entry of coal-lands.
§ 455. Pre-emption of coal-lands.
§ 456. Pre-emption claims of coal-lands to be presented within sixty days, etc.
§ 457. Only one entry allowed.
§ 458. Conflicting claims.
§ 459. Rights reserved.
§ 460. Town sites on mineral lands authorized. Restriction.
§ 461. Reservoir sites located.
§ 462. Lands located and entered under mineral-land laws not included in amount limited.
§ 463. Forest reservations. When to be established.
§ 464. Use of timber, etc., by settlers, etc.
§ 465. Egress and ingress of settlers within reservations, etc.

§ 466. Restoration of mineral or agricultural lands to public domain.
§ 467. Control of forest reserves transferred to Agricultural Department.
§ 468. Defining jurisdiction of Department of the Interior and Department of Agriculture within forest reserves.
§ 469. Removal of timber.
§ 470. Citizens of Colorado, Nevada, and the territories authorized to fell and remove timber on public domain for mining and domestic purposes.
§ 471. Duty of register and receiver.
§ 472. Punishment for violation of act.
§ 473. Timber-cutting.
§ 474. Timber may be cut for smelting purposes.
§ 475. Water rights granted for mining, etc., purposes. Regulations. Forest reserves.
§ 476. Sale of timber and stone lands.
§ 477. Application for purchase. Penalty for false swearing, etc.
§ 478. Publication of application. Proofs. Entry and patent. Objections.
§ 479. Building-stone lands.
§ 480. Timber and stone lands.
§ 481. Reservations in patents for right of way for ditches.
§ 482. Bankruptcy applies to mining as well as to other corporations.
§ 483. Limitations of suits to annul patents.

§ 410. Mineral lands reserved. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.[1]

§ 411. Mineral lands open to purchase by citizens. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are ap-

[1] U. S. Rev. Stats., § 2318; 14 Stats. at L., p. 86; 5 Fed. Stats. Ann., p. 4; U. S. Comp. Stats. 1901, p. 1423.

plicable and not inconsistent with the laws of the United States.[2]

§ 412. **Length of mining claims upon veins or lodes.** Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.[3]

§ 413. **Proof of citizenship.** Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any state or territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.[4]

[2] U. S. Rev. Stats., § 2319; 17 Stats. at L., p. 91; 5 Fed. Stats. Ann., p. 4; U. S. Comp. Stats. 1901, p. 1424.

[3] U. S. Rev. Stats., § 2320; 17 Stats. at L., p. 91; 5 Fed. Stats. Ann., p. 8; U. S. Comp. Stats. 1901, p. 1424.

[4] U. S. Rev. Stats., § 2321; 17 Stats. at L., p. 94; 5 Fed. Stats. Ann., p. 13; U. S. Comp. Stats. 1901, p. 1425.

§ 414. Affidavit of citizenship, before whom made. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record or before any notary public of any state or territory.[5]

§ 415. Locators' rights of possession and enjoyment. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with state, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.[6]

[5] Act April 26, 1882, ch. 106, § 2, 22 Stats. at L., p. 49; 5 Fed. Stats. Ann., p. 13; U. S. Comp. Stats. 1901, p. 1425.

[6] U. S. Rev. Stats., § 2322; 17 Stats. at L., p. 91; 5 Fed. Stats. Ann., p. 13; U. S. Comp. Stats. 1901, p. 1425.

§ 416. **Owners of tunnels, rights of.** Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.[7]

§ 417. **Regulations made by miners.** The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen

[7] U. S. Rev. Stats., § 2323; 17 Stats. at L., p. 92; 5 Fed. Stats. Ann., p. 18; U. S. Comp. Stats. 1901, p. 1426.

hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures. Provided, that the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two.[8]

§ 418. **Assessment required for oil claims.** That where oil-lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying

[8] U. S. Rev. Stats., § 2324, as amended 1880; act May 10, 1872, ch. 152, § 5, 17 Stats. at L., p. 92; act Jan. 22, 1880, ch. 9, § 2, 21 Stats. at L., p. 61; 5 Fed. Stats. Ann., p. 19; U. S. Comp. Stats. 1901, p. 1426.

contiguous and owned by the same person or corporation, not exceeding five claims in all; provided, that said labor will tend to the development or to determine the oil-bearing character of such contiguous claims.[9]

§ 419. **Expenditure of money on tunnels.** Be it enacted, etc., That section two thousand three hundred and twenty-four of the Revised Statutes, be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.[10]

§ 420. **Soldiers and sailors in war with Spain relieved from assessment-work.** Be it enacted, etc., That the provisions of section twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, shall not apply to claims or parts of claims owned by persons who may enlist in the volunteer army or navy of the United States for service in a war between this country and Spain, so that no mining claim or any part thereof owned by such person which has been regularly located and recorded shall be subject to forfeiture for non-performance of the annual assessments until six months after such owner is mustered out of the service, or,

[9] Act Feb. 12, 1903, 32 Stats. at L., p. 825; 10 Fed. Stats. Ann., p. 236; U. S. Comp. Stats. 1901, Sup. 1905, p. 331.

[10] Act Feb. 11, 1875, ch. 41, 18 Stats. at L., p. 315; 5 Fed. Stats. Ann., p. 21; U. S. Comp. Stats. 1901, p. 1427.

if he should not survive the war, then six months after his death in the service.[11]

§ 421. **Notice of enlistment to be given.** That those desiring to take advantage of this act shall file, or cause to be filed, a notice in the clerk's office where the location-certificate of said mine is recorded before the expiration of the assessment year, giving notice of his enlistment and of his desire to hold said claim under this act.[12]

§ 422. **Co-owners of claims not relieved from proportion of work.** That if any such enlisted soldier or sailor has a co-owner or co-owners in any mining claim, and who are not in the army or navy, and such co-owner or co-owners fail to do such a proportion of one hundred dollars' worth of work per annum as the interest of such non-enlisted person or persons bears to the whole claim, then such interest shall be open to relocation by any other qualified person or persons by their doing the necessary work thereon and filing an affidavit of labor showing the forfeiture and that the relocators had done the annual work required of such non-enlisted persons and succeeded them in right under this act, which work may be done at any time after the expiration of the assessment year and before the former owners resume work thereon. The work and affidavit aforesaid shall operate as a transfer of said forfeited interest from the former owners to said relocators.[13]

§ 423. **Patents for mineral lands. How obtained.** A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of

[11] Act July 2, 1898, ch. 563, § 1, 30 Stats. at L., p. 651; 5 Fed. Stats. Ann., p. 21; U. S. Comp. Stats. 1901, p. 1428.

[12] Act July 2, 1898, ch. 563, § 2, 30 Stats. at L., p. 651; 5 Fed. Stats. Ann., p. 22; U. S. Comp. Stats. 1901, p. 1428.

[13] Act July 2, 1898, ch. 563, § 3, 30 Stats. at L., p. 651; 5 Fed. Stats. Ann., p. 22; U. S. Comp. Stats. 1901, p. 1428.

land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land-office, upon the filing of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and receiver of the proper land-office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per

acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter. Provided, that where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits. And provided, that this section shall apply to all applications now pending for patents to mineral lands.[14]

§ 424. Adverse claim. Proceedings on. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the

[14] U. S. Rev. Stats., § 2325; 17 Stats. at L., p. 92, as amended by 21 Stats. at L., p. 61; 5 Fed. Stats. Ann., p. 31; U. S. Comp. Stats. 1901, p. 1429.

description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the commissioner of the general land-office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the commissioner of the general land-office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.[15]

§ 425. **Same. Findings by jury. Costs.** Be it enacted, etc., That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land-office or be entitled to a patent for the ground in controversy until he shall have perfected his title.[16]

§ 426. **Same. Oath of claimant. Before whom made.** Be it enacted, etc., That the adverse claim required by section twenty-three hundred and twenty-six of the Revised

[15] U. S. Rev. Stats., § 2326; 17 Stats. at L., p. 93; 5 Fed. Stats. Ann., p. 35; U. S. Comp. Stats. 1901, p. 1430.

[16] Act March 3, 1881, ch. 140, 21 Stats. at L., p. 505; 5 Fed. Stats. Ann., p. 36; U. S. Comp. Stats. 1901, p. 1431.

Statutes may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or of the state or territory where the adverse claimant may then be, or before any notary public of such state or territory.[17]

§ 427. Description of vein or lode claims on surveyed and unsurveyed lands. Be it enacted, etc., That section twenty-three hundred and twenty-seven of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

"The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and the surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments

[17] Act April 26, 1882, ch. 106, § 1, 22 Stats. at L., p. 49; 5 Fed. Stats. Ann., p. 37; U. S. Comp. Stats. 1901, p. 1431.

on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto."[18]

§ 428. **Pending applications. Existing rights.** Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the general land-office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.[19]

§ 429. **Conformity of placer claims to surveys. Limit of.** Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.[20]

§ 430. **Subdivisions of ten-acre tracts. Maximum of placer locations.** Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred

[18] U. S. Rev. Stats., § 2327, as amended April 28, 1904, ch. 1786; 33 Stats. at L., p. 545; 10 Fed. Stats. Ann., p. 235; U. S. Comp. Stats. 1901, Sup. 1905, p. 331.

[19] U. S. Rev. Stats., § 2328; 17 Stats. at L., p. 94; 5 Fed. Stats. Ann., p. 41; U. S. Comp. Stats. 1901, p. 1431.

[20] U. S. Rev. Stats., § 2329; act July 9, 1870, ch. 235, § 12, 16 Stats. at L., p. 217; 5 Fed. Stats. Ann., p. 42; U. S. Comp. Stats. 1901, p. 1432.

and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.[21]

§ 431. Conformity of placer claims to surveys. Limitation of claims. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.[22]

§ 432. What evidence of possession, etc., to establish a right to a patent. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the state or territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter

[21] U. S. Rev. Stats., § 2330; act July 9, 1870, ch. 235, § 12, 16 Stats. at L., p. 217; 5 Fed. Stats. Ann., p. 42; U. S. Comp. Stats. 1901, p. 1432.

[22] U. S. Rev. Stats., § 2331; 17 Stats. at L., p. 94; 5 Fed. Stats. Ann., p. 43; U. S. Comp. Stats. 1901, p. 1432.

shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.[23]

§ 433. **Proceedings for patent for placer claims, etc.** Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.[24]

§ 434. **Entry of building-stone lands under placer mining laws.** Be it enacted, etc., That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building-stone under the provisions of the law in relation to placer mineral claims; provided, that lands reserved for the benefit of the public

[23] U. S. Rev. Stats., § 2332, act July 9, 1870, ch. 235, § 13, 16 Stats. at L., p. 217; 5 Fed. Stats. Ann., p. 44; U. S. Comp. Stats. 1901, p. 1433.

[24] U. S. Rev. Stats., § 2333; 17 Stats. at L., p. 94; 5 Fed. Stats. Ann., p. 45; U. S. Comp. Stats. 1901, p. 1433.

schools or donated to any state shall not be subject to entry under this act.[25]

§ 435. **Entry of petroleum or other mineral-oil lands under placer mining laws.** Be it enacted, etc., That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims: provided, that lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof.[26]

Editorial note. The above is the Federal law in regard to the location of oil claims, and in connection therewith the matters following should be considered. The matter of "discovery" is fully gone into in the first part of this work;[26a] but in that place there is no specific treatment as to what may or may not constitute a discovery of oil. In view of the immense quantity of land that is being located in California, Utah, and elsewhere, at this time, by people who think they are acquiring title to oil-lands, it is thought that the following matter from the decisions in relation to locations, etc., of oil-lands may be useful.

What is not a sufficient discovery of oil. The supreme court of the state of California has held, in Miller v. Chrisman,[26b] that where the locator had posted his notice and had discovered "indications" of petroleum, and testified that he saw a spring, and that "the oil comes out and floats over the water in the summer-time when it is hot. In June, 1895, there was a little water with oil and a little oil with

[25] Act Aug. 4, 1892, ch. 375, § 1, 27 Stats. at L., p. 348; 5 Fed. Stats. Ann., p. 47; U. S. Comp. Stats. 1901, p. 1434.

[26] Act Feb. 11, 1897, ch. 216, 29 Stats. at L., p. 526; 5 Fed. Stats. Ann., p. 47; U. S. Comp. Stats. 1901, p. 1434.

[26a] See ante, ch. XI.

[26b] 140 Cal. 440, 446, 73 Pac. Rep. 1083, 74 Id. 444.

water coming out. It was dripping over a rock about two feet high. There was no pool; it was just dripping a little water and oil, not much water." The court said this was not sufficient to constitute a discovery, saying that the "law requires something more than conjecture, hope, or even indications. The geological formation of the country may be such as scientific research and practical experience have shown to be likely to yield oil in paying quantities. Taken with this, there may be other surface indications, such as seepage of oil. All these things combined may be sufficient to justify the expectation and hope that upon driving a well to sufficient depth, oil may be discovered, but, one and all, they do not, in and of themselves, amount to a discovery." This decision was affirmed by the supreme court of the United States.[26c] The United States circuit court for the ninth circuit took the same view, where the same questions, involving the same ground, were before it.[26d]

The latest opinion we have is also by the supreme court of California, in New England and Coalinga Oil Co. v. Congdon, decided October 11, 1907,[26e] where the only evidence that the land was oil-bearing consisted of the testimony of plaintiff's superintendent, who testified that he found on the land "some oil-sand stained with oil, and a ridge of fossil," and that oil had been discovered in neighboring locations, the nearest well being some two miles distant, and that the geological formation indicated the probable existence of oil-bearing strata in the claim. The court held that there was not a sufficient discovery, saying further: "It is now well settled that the discovery of mineral within the limits of the claim is as essential to the validity of the location in the case of placers as it is in lode locations," and that "a discovery is requisite to a perfect placer location."

Locator protected against fraudulent or clandestine entries. In this last case, the court also held: "It is, no

[26c] Chrisman v. Miller, 197 U. S. 312, bk. 49 L. ed. 770, 25 Sup. Ct. Rep. 468.

[26d] Nevada Sierra Oil Co. v. Home Oil Co., 98 Fed. Rep. 680. See also Weed v. Snook, 144 Cal. 439, 440, 77 Pac. Rep. 1023.

[26e] 92 Pac. Rep. 180; will probably be reported in 151 Cal.

doubt, true that the discovery need not precede the location. As is said in Miller v. Chrisman, supra, ' the discovery may be made subsequently, and when made, operates to perfect the location against all the world, saving those whose bona fide rights have intervened. One who thus in good faith makes his location, remains in possession, and with due diligence prosecutes his work toward a discovery, is fully protected against all forms of forcible, fraudulent, surreptitious, or clandestine entries and intrusions upon his possession.' But where the alleged locator has not made a discovery, and has not retained possession for the purpose of prosecuting work, looking to a discovery, his mere posting the notice and marking of boundaries upon the ground will not serve to exclude others, who may peaceably enter upon the land which he is not actually working or occupying." [26*]

§ 436. **Saline-lands. To be located as placer claims, but limiting one location for each person.** That all unoccupied public lands of the United States containing salt-springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer mining claims; provided, that the same person shall not locate or enter more than one claim hereunder.

§ 437. **Same. Utah owns salt-lands within the state.** When Utah was admitted to the Union as a state, pursuant to the act of July 16, 1894, all saline-lands in Utah were included in the grant to the state for the benefit of the State University.[28]

§ 438. **Surveyor-general to appoint surveyors of mining claims, etc.** The surveyor-general of the United States may appoint in each land district containing mineral lands as

[26*] See Weed v. Snook, supra.

[27] Act Jan. 21, 1901, 31 Stats. at L., p. 745; 5 Fed. Stats. Ann., p. 48; U. S. Comp. Stats. 1901, p. 1435.

[28] 28 Stats. at L., p. 109.

many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The commissioner of the general land-office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted, with the other papers in the case, to the commissioner of the general land-office.[29]

§ 439. Verification of affidavits, etc. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once

[29] U. S. Rev. Stats., § 2334; 17 Stats. at L., p. 95; 5 Fed. Stats. Ann., p. 49; U. S. Comp. Stats. 1901, p. 1435

a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.[30]

§ 440. **Where veins intersect, etc.** Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.[31]

§ 441. **Patents for non-mineral lands, etc. Mill sites.** Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.[32]

§ 442. **What condition of sale may be made by local legislature.** As a condition of sale, in the absence of neces-

[30] U. S. Rev. Stats., § 2335; 17 Stats. at L., p. 95; 5 Fed. Stats. Ann., p. 49; U. S. Comp. Stats. 1901, p. 1435.

[31] U. S. Rev. Stats., § 2336; 17 Stats. at L., p. 96; 5 Fed. Stats. Ann., p. 50; U. S. Comp. Stats. 1901, p. 1436.

[32] U. S. Rev. Stats., § 2337; 17 Stats. at L., p. 96; 5 Fed. Stats. Ann., p. 52; U. S. Comp. Stats. 1901, p. 1436.

sary legislation by Congress, the local legislature of any state or territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.[33]

§ 443. **Vested rights to use of water for mining, etc. Right of way for canals.** Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.[34]

§ 444. **Patents, pre-emptions, and homesteads subject to vested and accrued water rights.** All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.[35]

§ 445. **Mineral lands in which no valuable mines are discovered, open to homesteads.** Wherever, upon the lands heretofore designated as mineral lands, which have been

[33] U. S. Rev. Stats., § 2338; act July 26, 1866, ch. 262, § 5, 14 Stats. at L., p. 252; 5 Fed. Stats. Ann., p. 52; U. S. Comp. Stats. 1901, p. 1436.

[34] U. S. Rev. Stats., § 2339; act July 26, 1866, ch. 262, § 9, 14 Stats. at L., p. 253; 7 Fed. Stats. Ann., p. 1090; U. S. Comp. Stats. 1901, p. 1437.

[35] U. S. Rev. Stats., § 2340; act July 9, 1870, ch. 235, § 17, 16 Stats. at L., p. 218; 7 Fed. Stats. Ann., p. 1096; U. S. Comp. Stats. 1901, p. 1437.

excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this title, relating to "homesteads."[36]

§ 446. **Mineral lands, how set apart as agricultural lands.** Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.[37]

§ 447. **Additional land districts and officers. Power of the President to provide.** The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.[38]

§ 448. **Provisions of the statute not to affect certain rights.** Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions

[36] U. S. Rev. Stats., § 2341; act July 26, 1866, ch. 262, § 10, 14 Stats. at L., p. 253; 5 Fed. Stats. Ann., p. 53; U. S. Comp. Stats. 1901, p. 1437.

[37] U. S. Rev. Stats., § 2342; act July 26, 1866, ch. 262, § 11, 14 Stats. at L., p. 253; 5 Fed. Stats. Ann., p. 53; U. S. Comp. Stats. 1901, p. 1437.

[38] U. S. Rev. Stats., § 2343; act July 26, 1866, ch. 262, § 7, 14 Stats. at L., p. 252; 6 Fed. Stats. Ann., p. 235; U. S. Comp. Stats. 1901, p. 1438.

of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the state of Nevada," approved July twenty-five, eighteen hundred and sixty-six.[39]

§ 449. **Mineral lands in certain states excepted.** The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the states of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona fide entries of such lands within the states named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.[40]

§ 450. **Mineral lands in Missouri and Kansas. Disposal of, as agricultural lands.** Be it enacted, etc., That within the states of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of mining resources of the United States" approved May tenth, eighteen hundred and seventy-two and all lands in said states shall be subject to disposal as agricultural lands.[41]

§ 451. **Mineral lands in Alabama. Disposal of, as agricultural lands.** Be it enacted, etc., That within the state of

[39] U. S. Rev. Stats., § 2344; act July 9, 1870, ch. 235, § 17, 16 Stats. at L., p. 218; act May 10, 1872, ch. 152, § 16, 17 Stats. at L., p. 96; 5 Fed. Stats. Ann., p. 54; U. S. Comp. Stats. 1901, p. 1438.

[40] U. S. Rev. Stats., § 2345; act Feb. 18, 1873, ch. 159, 17 Stats. at L., p. 465; 5 Fed. Stats. Ann., p. 54; U. S. Comp. Stats. 1901, p. 1438.

[41] Act May 5, 1876, ch. 91, 19 Stats. at L., p. 52; 5 Fed. Stats. Ann., p. 54; U. S. Comp. Stats. 1901, p. 1439.

Alabama all public lands, whether mineral or otherwise, shall be subject to disposal only as agricultural lands: provided however, that all lands which have heretofore been reported to the general land-office as containing coal and iron shall first be offered at public sale. . . . (Part of act omitted relates to pending homestead entries.)[42]

§ 452. **Grants of lands to states or corporations not to include mineral lands.** No act passed at the first session of the thirty-eighth Congress, granting lands to states or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.[43]

§ 453. **Indian reservations.** That in the lands within the former Uncompahgre Indian reservation, in the state of Utah, containing gilsonite, asphaltum, elaterite, or other like substances, which were reserved from location and entry by provision in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June seventh, eighteen hundred and ninety-seven, all discoveries and locations of any such mineral lands by qualified persons prior to January first, eighteen hundred and ninety-one, not previously discovered and located, who recorded notices of such discoveries and locations prior to January first, eighteen hundred and ninety-one, either in the state of Colorado, or in the office

[42] Act March 3, 1883, ch. 118, 22 Stats. at L., p. 487; 5 Fed. Stats. Ann., p. 54; U. S. Comp. Stats. 1901, p. 1439.

[43] U. S. Rev. Stats., § 2346, res. Jan. 30, 1865, No. 10, 13 Stats. at L., p. 567; 5 Fed. Stats. Ann., p. 55; U. S. Comp. Stats. 1901, p. 1439

of the county recorder of Uintah County, Utah, shall have all the force and effect accorded by law to locations of mining claims upon the public domain. All such locations may hereafter be perfected, and patents shall be issued therefor upon compliance with the requirements of the mineral-land laws, provided that the owners of such locations shall relocate their respective claims and record the same in the office of the county recorder of Uintah County, Utah, within ninety days after the passage of this act. All locations of any such mineral lands made and recorded on or subsequent to January first, eighteen hundred and ninety-one, are hereby declared to be null and void; and the remainder of the lands heretofore reserved as aforesaid because of the mineral substances contained in them, in so far as the same may be within even-numbered sections, shall be sold and disposed of in tracts not exceeding forty acres, or a quarter of a quarter of a section, in such manner and upon such terms and with such restrictions as may be prescribed in a proclamation of the President of the United States issued for that purpose not less than one hundred and twenty days after the passage of this act, and not less than ninety days before the time of sale or disposal, and the balance of said lands and also all the mineral therein are hereby specifically reserved for future action of Congress.[44]

§ 454. **United States statutes for the acquirement of coal-lands. Entry of coal-lands.** Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual

[44] Act March 3, 1903, 32 Stats. at L., p. 998.

person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.[45]

§ 455. **Pre-emption of coal-lands.** Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: provided, that when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.[46]

§ 456. **Pre-emption claims of coal-lands to be presented within sixty days, etc.** All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement,

[45] U. S. Rev. Stats., § 2347; 17 Stats. at L., p. 607; 5 Fed. Stats. Ann., p. 55; U. S. Comp. Stats. 1901, p. 1440.

[46] U. S. Rev. Stats., § 2348; act March 3, 1873, ch. 279, § 2, 17 Stats. at L., p. 607; 5 Fed. Stats. Ann., p. 55; U. S. Comp. Stats. 1901, p. 1440.

and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.[47]

§ 457. **Only one entry allowed.** The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.[48]

§ 458. **Conflicting claims.** In case of conflicting claims upon coal-lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The commissioner of the general land-office is authorized to issue all needful rules and regula-

[47] U. S. Rev. Stats., § 2349; act March 3, 1873, ch. 279, § 3, 17 Stats. at L., p. 607; 5 Fed. Stats. Ann., p. 56; U. S. Comp. Stats. 1901, p. 1440.

[48] U. S. Rev. Stats., § 2350; act March 3, 1873, ch. 279, § 4, 17 Stats. at L., p. 607; 5 Fed. Stats. Ann., p. 56; U. S. Comp. Stats. 1901, p. 1441.

tions for carrying into effect the provisions of this and the four preceding sections.[49]

§ 459. **Rights reserved.** Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.[50]

§ 460. **Town sites on mineral lands authorized. Restriction.** [The lands entered under the mineral laws not included in restriction to three hundred and twenty acres.] That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: provided, that no entry shall be made by such mineral-vein claimant for surface-ground where the owner or occupier of the surface-ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.[51]

§ 461. **That reservoir sites located** or selected and to be located and selected under the provisions of "An act making

[49] U. S. Rev. Stats., § 2351; act March 3, 1873, ch. 279, § 5, 17 Stats. at L., p. 608; 5 Fed. Stats. Ann., p. 56; U. S. Comp. Stats. 1901, p. 1411.

[50] U. S. Rev. Stats., § 2352; act March 3, 1873, ch. 279, § 6, 17 Stats. at L., p. 608; 5 Fed. Stats. Ann., p. 57; U. S. Comp. Stats. 1901, p. 1411.

[51] Act March 3, 1891, § 16, 26 Stats. at L., p. 1101; 6 Fed. Stats. Ann., p. 352; U. S. Comp. Stats. 1901, p. 1459.

appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs; excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs.[52]

§ 462. **Lands located and entered under mineral-land laws not included in amount limited.** And that the provision of "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz.: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral-land laws.[53]

§ 463. **Forest reservations. When to be established.** No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes. . . .

[52] Act March 3, 1891, § 17, 26 Stats. at L., p. 1101; 7 Fed. Stats. Ann., p. 1097; U. S. Comp. Stats. 1901, p. 1554.

[53] Act March 3, 1891, § 17, 26 Stats. at L., p. 1101; 6 Fed. Stats. Ann., p. 313; U. S. Comp. Stats. 1901, p. 1405.

§ 464. **Use of timber, etc., by settlers, etc.** The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the state or territory, respectively, where such reservations may be located.

§ 465. **Egress and ingress of settlers within reservations, etc.** Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon-roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: provided, that such persons comply with the rules and regulations covering such forest reservations. . . .

§ 466. **Restoration of mineral or agricultural lands to public domain.** Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the state or territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in

any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.[54]

§ 467. **Control of forest reserves transferred to Agricultural Department.** That the Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.[55]

§ 468. **Defining jurisdiction of Department of the Interior and Department of Agriculture within forest reserves.** The Department of Agriculture is invested with jurisdiction to pass upon all applications under any law of the United States providing for the granting of a permission to occupy and use lands in a forest reserve, which occupation or use is temporary in character, and will in no wise affect the fee or cloud the title of the United States should the reserve be discontinued. The Department of the Interior retains jurisdiction over all applications affecting lands within a forest reserve, the granting of which amounts to an easement running with the land, with the further understanding that any permission or license granted by the Department of Agri-

[54] Act June 30, 1898, 30 Stats. at L., pp. 34, 35, 36; 7 Fed. Stats. Ann., pp. 312, 314, 315; U. S. Comp. Stats. 1901, pp. 1539, 1541, 1542.

[55] Act Feb. 1, 1905, ch. 288, § 1, 33 Stats. at L., p. 628; 10 Fed. Stats. Ann., p. 404.

culture is subject to any later disposal of the land by the Department of the Interior.[56]

§ 469. Removal of timber. The Secretary of Agriculture may, in his discretion, permit timber and other forest products cut or removed from the forest reserves of the United States, except the Black Hills forest reserve in South Dakota and the forest reserves in Idaho, to be exported from the state, territory, or the district of Alaska, in which said reserves are respectively situated.[57]

§ 470. Citizens of Colorado, Nevada, and the territories authorized to fell and remove timber on public domain for mining and domestic purposes. That all citizens of the United States and other persons, bona fide residents of the state of Colorado, or Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said states, territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: provided, the provisions of this act shall not extend to railroad corporations.[58]

[56] Correspondence between Secretary of the Interior and Secretary of Agriculture, June, 1905, 33 Land Dec. 609. It will be seen by this that the Department of the Interior still retains control over all matters pertaining to the entry and patenting and otherwise disposing of mineral lands in the United States forest reserves.

[57] Act Feb. 1, 1905, ch. 288, § 1, 33 Stats. at L., p. 873; 10 Fed. Stats. Ann., p. 406.

[58] Act June 3, 1878, § 1, 20 Stats. at L., pp. 88, 89; 7 Fed. Stats. Ann., pp. 297, 300; U. S. Comp. Stats. 1901, pp. 1528, 1529.

§ 471. **That it shall be the duty of the register** and the receiver of any local land-office in whose district any mineral land may be situated to ascertain from time to time where any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and, if so, they shall immediately notify the commissioner of the general land-office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts.[59]

§ 472. **Any person or persons who shall violate the provisions** of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.[60]

§ 473. **Timber-cutting.** Timber may be cut within the boundaries of the United States forest reserves and used for roasting ores.[61]

§ 474. **Timber may be cut for smelting purposes.** The provisions of section eight of the act of March 3, 1891, as amended by act of the same date, conferring upon the residents of certain states and territories authority to cut timber on the public lands for agricultural, mining, manufacturing or domestic purposes, contemplate the cutting and use of timber for smelting purposes.[62]

§ 475. **Water rights granted for mining, etc., purposes. Regulations. Forest reserves.** That rights of way for the

[59] Id., § 2.

[60] Id., § 3.

[61] In re United Verde Copper Co., 196 U. S. 207, bk. 49 L. ed. 449, 2 Sup. Ct. Rep. 222. In this case the supreme court of the United States overruled the decision of the Secretary of the Interior, the latter having held that the use of timber for roasting ore was not contemplated under the provisions of the statute or the rules of the Department.

[62] In re White, 34 Land Dec. 78.

construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the state or territory in which said reserves are respectively situated.[63]

§ 476. Sale of timber and stone lands. That surveyed public lands of the United States within the public land states, not included within military, Indian, or other reservations of the United States, valuable chiefly for timber, but unfit for cultivation, and which have not been offered at public sale according to law, may be sold to citizens of the United States, or persons who have declared their intention to become such, in quantities not exceeding one hundred and sixty acres to any one person or association of persons, at the minimum price of two dollars and fifty cents per acre; and lands valuable chiefly for stone may be sold on the same terms as timber-lands: provided, that nothing herein contained shall defeat or impair any bona fide claim under any law of the United States, or authorize the sale of any mining claim, or the improvements of any bona fide settler, or lands containing gold, silver, cinnabar, copper, or coal, or lands selected by the said states under any law of the United States donating lands for internal improvements, education, or other purposes: and provided further, that none of the rights conferred by the act approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," shall be abrogated by this act; and all patents granted shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as

[63] 33 Stats. at L., p. 628, § 1; 10 Fed. Stats. Ann., p. 405.

may have been acquired under and by the provisions of said act; and such rights shall be expressly reserved in any patent issued under this act.[64]

§ 477. **Application for purchase. Penalty for false swearing, etc.** That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the general land-office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except himself; which statement must be verified by the oath of the applicant before the register or the receiver of the land-office within the district where the land is situated; and if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.[65]

[64] Amendment of act Aug. 4, 1892, 27 Stats. at L., p. 345; 7 Fed. Stats. Ann., p. 300; U. S. Comp. Stats. 1901, p. 1545.

[65] 20 Stats. at L., p. 89, § 2; 7 Fed. Stats. Ann., p. 301; U. S. Comp. Stats. 1901, p. 1545.

§ 478. Publication of application. Proofs. Entry and patent. Objections. That upon the filing of said statement, as provided in the second section of this act, the register of the land-office, shall post a notice of such application, embracing a description of the land by legal subdivisions, in his office, for a period of sixty days, and shall furnish the applicant a copy of the same for publication, at the expense of such applicant, in a newspaper published nearest the location of the premises, for a like period of time; and after the expiration of said sixty days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the register of the land-office satisfactory evidence, first, that said notice of the application prepared by the register as aforesaid was duly published in a newspaper as herein required; secondly, that the land is of the character contemplated in this act, unoccupied and without improvements, other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal; and upon payment to the proper officer of the purchase-money of said land, together with the fees of the register and the receiver, as provided for in case of mining claims in the twelfth section of the act approved May tenth, eighteen hundred and seventy-two, the applicant may be permitted to enter said tract, and, on the transmission to the general land-office of the papers and testimony in the case, a patent shall issue thereon: provided, that any person having a valid claim to any portion of the land may object, in writing, to the issuance of a patent to lands so held by him, stating the nature of his claim thereto; and evidence shall be taken, and the merits of said objection shall be determined by the officers of the land-office, subject to appeal, as in other land cases. Effect shall be given to the foregoing provisions of this act by regulations to be prescribed by the commissioner of the general land-office.[66]

[66] 20 Stats. at L., p. 90, § 3; 7 Fed. Stats. Ann., p. 304; U. S. Comp. Stats. 1901, p. 1546.

§ 479. **Building-stone lands** may be entered under the placer mining laws.[67]

§ 480. **Timber and stone lands.** The fact that land is more valuable for the timber and stone thereon than for agricultural purposes does not exclude it from appropriation under the homestead laws, if not mineral in character. The allegation, in an affidavit of contest, that land "is more valuable for the timber and stone," does not, by necessary implication, charge that the land is mineral in character, and does not constitute a sufficient basis for a contest.[68]

§ 481. **Reservations in patents for right of way for ditches.** In all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States. . . .[69]

§ 482. **Bankruptcy applies to mining as well as to other corporations.** Under the act of Congress of 1898 as amended February 5, 1903, mining corporations may be adjudged involuntary bankrupts, and are entitled to the benefits of such bankruptcy act.[70] Prior to above amendment, mining corporations were not entitled to the privileges extended to some other kinds of corporations under this bankruptcy statute.[71]

[67] See ante, pt. I, ch. VI, § 67.

[68] Jones vs. Aztec L. & C. Co., 34 Land Dec. 115.

[69] Act of Congress approved Aug. 30, 1890, 26 Stats. at L., p. 391; 6 Fed. Stats. Ann., p. 508; U. S. Comp. Stats. 1901, p. 1570.

[70] 32 Stats. at L., p. 797; 1 Fed. Stats. Ann., insertion p. 524; U. S. Comp. Stats. 1901, Sup. 1905, p. 683.

[71] Herron vs. Superior Court, 136 Cal. 279, 68 Pac. Rep. 814; In re Elk Park M. & M. Co., 101 Fed. Rep. 422; In re Rollins G. & S. Co., 102 Fed. Rep. 982; In re Chicago-Joplin L. & Z. Co., 104 Fed. Rep. 67; In re Woodside Coal Co., 105 Fed. Rep. 56; Federal Bankruptcy Act 1898, § 4; 30 Stats. at L., p. 547; 1 Fed. Stats. Ann., p. 524.

§ 483. Limitations of suits to annul patents. That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents. . . .[72]

[72] Act March 3, 1891, ch. 561, § 8, 26 Stats. at L., p. 1099; 6 Fed. Stats. Ann., p. 526; U. S. Comp. Stats. 1901, p. 1521; Peabody G. M. Co. vs. Gold Hill M. Co., 106 Fed. Rep. 241, 21 Morr. Min. Rep. 151.

CHAPTER II.

FEDERAL STATUTES. ALASKA.

§ 484. Mining rights in Alaska granted to native-born citizens of the Dominion of Canada.
§ 485. Mining laws extended to the district of Alaska.
§ 486. An act making further provisions for a civil government for Alaska, and for other purposes. District divided into three recording divisions.
§ 487. Recording districts.
§ 488. Same. Recorder.
§ 489. Same. Change of district, etc.
§ 490. What to be recorded.
§ 491. Where instruments recorded.
§ 492. Miners may make rules for district when.
§ 493. Occupants of school or mission lands not to be disturbed. Missionary stations.
§ 494. Mining laws.
§ 495. Annual improvements, etc., required on mining claims. Filing affidavits. Contents. Prima facie evidence of performance of work, etc. Forfeiture. Officer before whom affidavits may be made. Time of filing.
§ 496. Same. Fee.
§ 497. Additional land districts. Nome and Fairbanks districts, Alaska, created.
§ 498. Registers and receivers. Clerks of court and marshals to act.
§ 499. Fees, etc. Surplus. No other salary.
§ 500. Surveys. Approval.
§ 501. In effect when.
§ 502. Coal-lands in Alaska.
§ 503. Same. Who to receive patents.
§ 504. Same. Adverse claims.
§ 505. Repeal of conflicting laws.

§ 484. Mining rights in Alaska granted to native-born citizens of Dominion of Canada. That native-born citizens of the Dominion of Canada shall be accorded in said district of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada

or the local laws, rules, and regulations; but no greater rights shall be thus accorded than citizens of the United States or persons who have declared their intention to become such may enjoy in said district of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect.[1]

§ 485. **Mining laws extended to the district of Alaska.** That the said district of Alaska is hereby created a land district, and a United States land-office for said district is hereby located at Sitka. And the laws of the United States relating to mining claims, and the rights incident thereto, shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President; provided, that the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress; and provided further, that parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid.[2]

486. **An act making further provisions for a civil government for Alaska, and for other purposes. District divided into three recording divisions.** The judges of the district, or a majority of them, shall, as soon as practicable after their appointment, meet, and by appropriate order, to

[1] Act May 14, 1898, § 13, 30 Stats. at L., p. 415; 5 Fed. Stats. Ann., p. 8; U. S. Comp. Stats. 1901, p. 1124.

[2] Act May 17, 1884, § 8, 23 Stats. at L., p. 26; 1 Fed. Stats. Ann., p. 38.

be thereafter entered in each division of the court, divide the district into three recording divisions, designate the division of the court to supervise each, and also define the boundaries thereof by reference to natural objects and permanent landmarks or monuments, in such manner that the boundaries of each recording division can be readily determined and become generally known from such description, which order shall be given publicity in such manner by posting, publication, or otherwise, as the judges or any division of the court may direct, the necessary expense of the publication of such order and description of the recording divisions to be allowed and paid as other court expenses.[3]

§ 487. **Recording districts.** At any regular or special term an order may be made by the court establishing one or more recording districts within the recording division under the supervision of such division of the court and defining the boundaries thereof by reference to natural objects and permanent landmarks or monuments, in such manner that the boundaries thereof can be readily determined.[4]

§ 488. **Same. Recorder.** The order establishing a recording district shall designate a commissioner to be ex officio recorder thereof, and shall also designate the place where the commissioner shall keep his recording office within the recording district: provided, the clerk of the court shall be ex officio recorder of all that portion of the recording division under the supervision of his division of the court not embraced within the limits of a recording district established, bounded, and described therein as authorized by this act. and when any part of the division for which a clerk has been recording shall be embraced in a recording district, such clerk shall transcribe that portion of his records appertaining to such district and deliver the same to the commissioner designated as recorder thereof.[5]

[3] Act June 6, 1900, § 13, 31 Stats. at L., pp. 326, 327; 1 Fed. Stats Ann., p. 28.

[4] Id.

[5] Id.

§ 489. **Same. Change of district, etc.** Whenever it appears to the satisfaction of the court that the public interests demand, or that the convenience of the people require, the court may change or modify the boundaries or discontinue a recording district or change the location of a recording office, or remove the commissioner acting as ex officio recorder, and appoint another commissioner to fill the office.[6]

§ 490. **What to be recorded.** The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney-General, record separately, in large and well-bound separate books, in fair hand: . . .

Seventh. Notices and declaration of water rights. . . .

Ninth. Affidavits of annual work done on mining claims.

Tenth. Notices of mining location and declaratory statements.[7]

§ 491. **Where instruments recorded.** Provided, notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject-matter affected by the instrument is situated, and where the property or subject-matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject-matter is situated.[8]

§ 492. . . . **Provided, miners in any organized mining district may make rules** and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this act or the general laws of the United States; and

[6] Id.

[7] Act June 6, 1900, § 15, 31 Stats. at L., p. 328; 1 Fed. Stats. Ann., pp. 28, 29, 30.

[8] Id.

nothing in this act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: provided further, all records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with [by] the United States commissioner at Juneau are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this act.[9]

§ 493. **Occupants of school or mission lands not to be disturbed. Missionary stations.** The Indians or persons conducting schools or missions in the district shall not be disturbed in the possession of any lands now actually in their use or occupation, and the land, at any station not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is hereby directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong; but nothing contained in this act shall be construed to put in force in the district the general land laws of the United States.[10]

§ 494. **Mining laws.** The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the district of Alaska.[11]

[9] Id., § 16.

[10] Act June 6, 1900, § 27, 31 Stats. at L., p. 330; 1 Fed. Stats. Ann., p. 32.

[11] 31 Stats. at L., p. 329; 1 Fed. Stats. Ann., p. 32.

§ 495. Annual improvements, etc., required on mining claims. Filing affidavits. Contents. Prima facie evidence of performance of work, etc. Forfeiture. Officer before whom affidavits may be made. Time of filing. That during each year and until patent has been issued therefor, at least one hundred dollars' worth of labor shall be performed or improvements made on, or for the benefit or development of, in accordance with existing law, each mining claim in the district of Alaska heretofore or hereafter located. And the locator or owner of such claim or some other person having knowledge of the facts may also make and file with the said recorder of the district in which the claims shall be situated an affidavit showing the performance of labor or making of improvements to the amount of one hundred dollars as aforesaid and specifying the character and extent of such work. Such affidavit shall set forth the following: First, the name or number of the mining claims and where situated; second, the number of days' work done and the character and value of the improvements placed thereon; third, the date of the performance of such labor and of making improvements; fourth, at whose instance the work was done or the improvements made; fifth, the actual amount paid for work and improvements, and by whom paid when the same was not done by the owner. Such affidavit shall be prima facie evidence of the performance of such work or making of such improvements, but if such affidavits be not filed within the time fixed by this act the burden of proof shall be upon the claimant to establish the performance of such annual work and improvements. And upon failure of the locator or owner of any such claim to comply with the provisions of this act, as to performance of work and improvements, such claim shall become forfeited and open to location by others as if no location of the same had ever been made. The affidavits required hereby may be made before any officer authorized to administer oaths, and the provisions of sections fifty-three hundred and ninety-two and fifty-three hundred and ninety-three of the Revised Statutes are hereby extended to such affidavits. Said affidavits shall

be filed not later than ninety days after the close of the year in which such work is performed.[12]

§ 496. **Same. Fee.** That the recorders for the several divisions or districts of Alaska shall collect the sum of one dollar and fifty cents as a fee for the filing, recording, and indexing said annual proofs of work and improvements for each claim so recorded.[13]

§ 497. **Additional land districts. Nome and Fairbanks districts, Alaska, created.** That there are hereby created two additional land districts, the boundaries of which shall be designated by the President, in the district of Alaska, to be known as the Nome land district and the Fairbanks land district, with the land-offices located, respectively, at Nome, Alaska, and Fairbanks, Alaska.[14]

§ 498. **Registers and receivers. Clerks of court and marshals to act.** That the clerks of the district courts at Nome and Fairbanks shall respectively be ex officio registers of the land-offices at Nome and Fairbanks and the marshals of the said courts at Nome and Fairbanks shall be ex officio receivers of public moneys for the Nome and Fairbanks land districts. Said officers shall perform the several duties of register of the land-office and receiver of public moneys for the land districts with all the powers incident to such offices to the same extent as now performed by the register of the land-office and the receiver of public moneys of Juneau, Alaska.[15]

§ 499. **Fees, etc. Surplus. No other salary.** That the said officers shall, in addition to their present compensation as clerk or marshal as provided by law, receive all the fees

[12] Act March 2, 1907, ch. 2559, § 1; 34 Stats. at L., p. 1243; Fed. Stats Ann., Sup. 1907, pp. 23, 24.

[13] Id., § 2.

[14] Act March 2, 1907, § 1, 34 Stats. at L., p. 1232; Fed. Stats. Ann., Sup. 1907, pp. 22, 23.

[15] Id., § 2.

and commissions allowed by law for their services as registers of land-offices and receivers of public moneys for land districts under the land laws: provided, that any fees or commissions in excess of one thousand five hundred dollars per annum received by either such officials shall be paid into the Treasury of the United States: provided, that no other salary than aforesaid shall be paid such registers and receivers.[16]

§ 500. **Surveys. Approval.** That the surveyor-general of the district of Alaska, under the direction of the Secretary of the Interior, shall furnish the receivers of said land-offices a sufficient quantity of numbers to be used in the different classes of official surveys that may be made in said Nome and Fairbanks land districts to meet the requirements thereof, and upon application by any person desiring to have an official survey made the receivers shall furnish a number or numbers for such survey or surveys, together with an order directing a qualified deputy surveyor to make the same, and such application, order, and the fee required to be paid to the surveyor-general in the district of Alaska shall be transmitted to the surveyor-general: provided, that all surveys thus made shall be approved by the surveyor-general as at present.[17]

§ 501. **In effect when.** That this act shall take effect and be in force from and after July first, nineteen hundred and seven.[18]

§ 502. **Coal-lands in Alaska.** That any person or association of persons qualified to make entry under the coal-land laws of the United States, who shall have opened or improved a coal-mine or coal-mines on any of the unsurveyed public lands of the United States in the district of Alaska, may locate the lands upon which such mine or

[16] Id., § 3.
[17] Id., § 4.
[18] Id., § 5.

mines are situated, in rectangular tracts containing forty, eighty, or one hundred and sixty acres, with north and south boundary lines run according to the true meridian, by marking the four corners thereof with permanent monuments, so that the boundaries thereof may be readily and easily traced. And all such locators shall, within one year from the passage of this act, or within one year from making such location, file for record in the recording district, and with the register and receiver of the land district in which the lands are located or situated, a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same.[19]

§ 503. **Same. Who to receive patents.** That such locator or locators, or their assigns, who are citizens of the United States, shall receive a patent to the lands located by presenting, at any time within three years from the date of such notice, to the register and receiver of the land district in which the lands so located are situated an application therefor, accompanied by a certified copy of a plat of survey and field-notes thereof, made by a United States deputy surveyor or a United States mineral surveyor duly approved by the surveyor-general for the district of Alaska, and a payment of the sum of ten dollars per acre for the lands applied for; but no such application shall be allowed until after the applicant has caused a notice of the presentation thereof, embracing a description of the lands, to have been published in a newspaper in the district of Alaska published nearest the location of the premises for a period of sixty days, and shall have caused copies of such notice, together with a certified copy of the official plat or survey, to have been kept posted in a conspicuous place upon the land applied for and in the land-office for the district in which the lands are located for a like period, and until after he shall have fur-

[19] Act April 28, 1904, § 1, 33 Stats. at L., pp. 525, 526; 10 Fed. Stats. Ann., pp. 27, 28; U. S. Comp. Stats. 1901, Sup. 1905, pp. 332, 333.

nished proof of such publication and posting, and such other proof as is required by the coal-land laws: provided, that nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.[20]

§ 504. **Same. Adverse claims.** That during such period of posting and publication, or within six months thereafter, any person or association of persons having or asserting any adverse interest or claim to the tract of land or any part thereof sought to be purchased shall file in the land-office where such application is pending, under oath, an adverse claim, setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of such court therein.[21]

§ 505. **Repeal of conflicting laws.** That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the district of Alaska.[22]

[20] Id., § 2.
[21] Id., § 3.
[22] Id., § 4.

CHAPTER III.

FEDERAL STATUTES. CALIFORNIA DEBRIS COMMISSION.

§ 506. California débris commission, relative to hydraulic mining. Appointment of commission. Authority and powers.
§ 507. Organization. Compensation. Rules of procedure.
§ 508. Jurisdiction over hydraulic mining. Injurious mining prohibited.
§ 509. Duties of commission.
§ 510. Surveys for débris reservoirs. Study of methods.
§ 511. Noting effects on navigable channels.
§ 512. Annual reports.
§ 513. Terms defined.
§ 514. Petitions for mining to be filed.
§ 515. Surrender to United States of right to regulate débris. Other processes not affected.
§ 516. Joint petition by mining-claim owners requiring a common dumping-ground.
§ 517. Publication of petition. Examinations. Hearings.
§ 518. Favorable decisions within thirty days. Order directing methods of mining, etc. Taxes on gross proceeds. Expenses. Hydraulic mining without impounding-works, etc. No tax on gross proceeds to be collected.
§ 519. Submission of plans, and work thereunder. Permission to commence mining.
§ 520. Conditions as to commencing operations.
§ 521. Allotment of expenses for common dumping-ground among mine-owners.
§ 522. Limit of débris washed away.
§ 523. Commission may reduce or revoke authority.
§ 524. Penalty for violating conditions.
§ 525. Examination of mines. Report.
§ 526. Use of public lands and material. Withdrawal from sale and entry.
§ 527. Wilful injury to works. Violations injuring navigation. Penalty.
§ 528. Tax on gross proceeds of hydraulic mines. "Débris fund" created. Advances from mine-owners.
§ 529. Consultation with state engineers.
§ 530. Restraining-dams and settling-reservoirs. To be built from special appropriations or débris fund.

§ 531. Contracts may be made, half to be paid by the state of California.
§ 532. Payments for work. How to be made.
§ 533. Secretary of War may undertake what.
§ 534. Mileage in lieu of traveling expenses.

§ 506. **California débris commission, relative to hydraulic mining. Appointment of commission. Authority and powers.** That a commission is hereby created, to be known as the California débris commission, consisting of three members. The President of the United States shall, by and with the advice and consent of the Senate, appoint the commission from officers of the corps of engineers, United States army. Vacancies occurring therein shall be filled in like manner. It shall have the authority, and exercise the powers hereinafter set forth, under the supervision of the chief of engineers and direction of the Secretary of War.[1]

§ 507. **Organization. Compensation. Rules of procedure.** That said commission shall organize within thirty days after its appointment by the selection of such officers as may be required in the performance of its duties, the same to be selected from the members thereof. The members of said commission shall receive no greater compensation than is now allowed by law to each, respectively, as an officer of said corps of engineers. It shall also adopt rules and regulations, not inconsistent with law, to govern its deliberations and prescribe the method of procedure under the provisions of this act.[2]

§ 508. **Jurisdiction over hydraulic mining. Injurious mining prohibited.** That the jurisdiction of said commission, in so far as the same affects mining carried on by the hydraulic process, shall extend to all such mining in the territory drained by the Sacramento and San Joaquin river systems

[1] 27 Stats. at L., p. 507, § 1; 5 Fed. Stats. Ann., p. 61.

[2] Id., § 2. This statute has been held constitutional and mandatory in its provisions: North Bloomfield Min. Co. v. United States, 88 Fed. Rep. 664.

in the state of California. Hydraulic mining, as defined in section eight hereof, directly or indirectly injuring the navigability of said river systems, carried on in said territory other than as permitted under the provisions of this act is hereby prohibited and declared unlawful.[3]

§ 509. **Duties of commission.** That it shall be the duty of said commission to mature and adopt such plan or plans, from examinations and surveys already made and from such additional examinations and surveys as it may deem necessary, as will improve the navigability of all the rivers comprising said systems, deepen their channels, and protect their banks. Such plan or plans shall be matured with a view of making the same effective as against the encroachment of and damage from débris resulting from mining operations, natural erosions, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in eighteen hundred and sixty, and permitting mining by the hydraulic process, as the term is understood in said state, to be carried on, provided the same can be accomplished, without injury to the navigability of said rivers or the lands adjacent thereto.[4]

§ 510. **Surveys for débris reservoirs. Study of methods.** That it shall further examine, survey, and determine the utility and practicability, for the purposes hereinafter indicated, of storage sites in the tributaries of said rivers and in the respective branches of said tributaries, or in the plains, basins, sloughs, and tule and swamp lands adjacent to or along the course of said rivers, for the storage of débris or water or as settling-reservoirs, with the object of using the same by either or all of these methods to aid in the improvement or protection of said navigable rivers by preventing deposits therein of débris resulting from mining operations, natural erosion, or other causes, or for affording

[3] 27 Stats. at L., p. 507, § 3; 5 Fed. Stats. Ann., p. 62.
[4] 27 Stats. at L., p. 507, § 4; 5 Fed. Stats. Ann., p. 62.

relief thereto in flood time and providing sufficient water to maintain scouring force therein in the summer season; and in connection therewith to investigate such hydraulic and other mines as are now or may have been worked by methods intended to restrain the débris and material moved in operating such mines by impounding-dams, settling-reservoirs, or otherwise, and in general to make such study of and researches in the hydraulic mining industry as science, experience, and engineering skill may suggest as practicable and useful in devising a method or methods whereby such mining may be carried on as aforesaid.[5]

§ 511. **Noting effects on navigable channels.** That the said commission shall from time to time note the conditions of the navigable channels of said river systems, by cross-section surveys or otherwise, in order to ascertain the effect therein of such hydraulic mining operations as may be permitted by its orders and such as is caused by erosion, natural or otherwise.[6]

§ 512. **Annual reports.** That said commission shall submit to the chief of engineers, for the information of the Secretary of War, on or before the fifteenth day of November of each year, a report of its labors and transactions, with plans for the construction, completion, and preservation of the public works outlined in this act, together with estimates of the cost thereof, stating what amounts can be profitably expended thereon each year. The Secretary of War shall thereupon submit same to Congress on or before the meeting thereof.[7]

§ 513. **Terms defined.** That for the purposes of this act "hydraulic mining" and "mining by the hydraulic process," are hereby declared to have the meaning and application given to said terms in said state.[8]

[5] 27 Stats. at L., p. 507, § 5; 5 Fed. Stats. Ann., p. 62.
[6] 27 Stats. at L., p. 508, § 6; 5 Fed. Stats. Ann., p. 62.
[7] 27 Stats. at L., p. 508, § 7; 5 Fed. Stats. Ann., p. 63.
[8] 27 Stats. at L., p. 508, § 8; 5 Fed. Stats. Ann., p. 63.

§ 514. **Petitions for mining to be filed.** That the individual proprietor or proprietors, or in case of a corporation its manager or agent appointed for that purpose, owning mining-ground in the territory in the state of California mentioned in section three hereof, which it is desired to work by the hydraulic process, must file with said commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by said commission.[9]

§ 515. **Surrender to United States of right to regulate débris. Other processes not affected.** That said commission shall be accompanied by an instrument duly executed and acknowledged, as required by the law of said state, whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this act, or any law that may hereafter be enacted, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the débris resulting from the working of said mine or mines shall be restrained, and what amount shall be produced therefrom; it being understood that the surrender aforesaid shall not be construed as in any way affecting the right of such owner or owners to operate said mine or mines by any other process or method now in use in said state: provided, that they shall not interfere with the navigability of the aforesaid rivers.[10]

§ 516. **Joint petition by mining-claim owners requiring a common dumping-ground.** That the owners of several mining claims situated so as to require a common dumping-ground or dam or other restraining-works for the débris issuing therefrom in one or more sites may file a joint petition setting forth such facts in addition to the requirements of section nine hereof; and where the owner of a hydraulic mine or owners of several such mines have and use common dumping sites for impounding débris or as settling-reservoirs, which sites are located below the mine of an applicant not

[9] 27 Stats. at L., p. 508, § 9; 5 Fed. Stats. Ann., p. 63.
[10] 27 Stats. at L., p. 508, § 10; 5 Fed. Stats. Ann., p. 63.

entitled to use same, such fact shall also be stated in said petition. Thereupon the same proceedings shall be had as provided for herein.[11]

§ 517. Publication of petition. Examinations. Hearings. A notice specifying briefly the contents of said petition and fixing a time previous to which all proofs are to be submitted shall be published by said commission in some newspaper or newspapers of general circulation in the communities interested in the matter set forth therein. If published in a daily paper such publication shall continue for at least ten days; if in a weekly paper in at least three issues of the same. Pending publication thereof said commission, or a committee thereof, shall examine the mine and premises described in such petition. On or before the time so fixed all parties interested, either as petitioners or contestants, whether miners or agriculturists, may file affidavits, plans and maps in support of their respective claims. Further hearings, upon notice to all parties of record, may be granted by the commission when necessary.[12]

§ 518. Favorable decisions within thirty days. Order directing methods of mining, etc. Taxes on gross proceeds. Expenses. Hydraulic mining without impounding-works, etc. No tax on gross proceeds to be collected. That section thirteen of an act of March first, eighteen hundred and ninety-three, entitled "An act to create the California débris commission and regulate mining in the state of California," is hereby amended so as to read as follows:

"That in case a majority of the members of said commission, within thirty days after the time so fixed, concur in the decision in favor of the petitioner or petitioners, the said commission shall thereupon make an order directing the methods and specifying in detail the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if any, if facilities therefor can be

[11] 27 Stats. at L., p. 508, § 11; 5 Fed. Stats. Ann., p. 63.
[12] 27 Stats. at L., p. 508, § 12; 5 Fed. Stats. Ann., p. 63.

found, shall be built and maintained; how and of what material; where to be located; and in general set forth such further requirements and safeguards as will protect the public interest and prevent injury to the said navigable rivers and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this act in relation to the working thereof and the payment of taxes on the gross proceeds of the same: provided, that all expenses incurred in complying with said order shall be borne by the owner or owners of such mine or mines; and provided further, that where it shall appear to said commission that hydraulic mining may be carried on without injury to the navigation of said navigable rivers and the lands adjacent thereto, an order may be made authorizing such mining to be carried on without requiring the construction of any restraining or impounding works or any settling-reservoirs: and provided also, that where such an order is made a license to mine, no taxes provided for herein on the gross proceeds of such mining operations shall be collected."[13]

§ 519. **Submission of plans, and work thereunder. Permission to commence mining.** That such petitioner or petitioners must within a reasonable time present plans and specifications of all works required to be built in pursuance of said order for examination, correction, and approval by said commission; and thereupon work may immediately commence thereon under the supervision of said commission or representative thereof attached thereto from said corps of engineers, who shall inspect same from time to time. Upon completion thereof, if found in every respect to meet the requirements of the said order and said approved plans and specifications, permission shall thereupon be granted to the owner or owners of such mine or mines to commence mining operations, subject to the conditions of said order and the provisions of this act.[14]

[13] Act March 1, 1893, § 13, 34 Stats. at L., p. 1001; Fed. Stats. Ann., Sup. 1907, p. 379.

[14] 27 Stats. at L., p. 509, § 14; 5 Fed. Stats. Ann., p. 64.

§ 520. **Conditions as to commencing operations.** That no permission granted to a mine owner or owners under this act shall take effect, so far as regards the working of a mine, until all impounding-dams or other restraining-works, if any are prescribed by the order granting such permission, have been completed and until the impounding-dams or other restraining-works or settling-reservoirs provided by said commission have reached such a stage as, in the opinion of said commission, it is safe to use the same: provided, however, that if said commission shall be of the opinion that the restraining and other works already constructed at the mine or mines shall be sufficient to protect the navigable rivers of said systems and the work of said commission, then the owner or owners of such mine or mines may be permitted to commence operations.[15]

§ 521. **Allotment of expenses for common dumping-ground among mine-owners.** That in case the joint petition referred to in section eleven hereof is granted, the commission shall fix the respective amounts to be paid by each owner of such mines toward providing and building necessary impounding-dams or other restraining-works. In the event of a petition being filed after the entry of such order, or in case the impounding dam or dams or other restraining works have already been constructed and accepted by said commission, the commission shall fix such amount as may be reasonable for the privilege of dumping therein, which amount shall be divided between the original owners of such impounding-dams and other restraining-works in proportion to the amount respectively paid by each party owning same. The expense of maintaining and protecting such joint dam or works shall be divided among mine-owners using the same in such proportion as the commission shall determine. In all cases where it is practicable, restraining and impounding works are to be provided, constructed, and maintained by mine-owners near or below the mine or mines before reaching the main tributaries of said navigable waters.[16]

[15] 27 Stats. at L., p. 509, § 15; 5 Fed. Stats. Ann., p. 64.
[16] 27 Stats. at L., p. 509, § 16; 5 Fed. Stats. Ann., p. 64.

§ 522. **Limit of débris washed away.** That at no time shall any more débris be permitted to be washed away from any hydraulic mine or mines situated on the tributaries of said rivers and the respective branches of each, worked under the provisions of this act, than can be impounded within the restraining-works erected.[17]

§ 523. **Commission may reduce or revoke authority.** That the said commission may at any time, when the condition of the navigable rivers or when the capacities of all impounding and settling facilities erected by mine-owners or such as may be provided by government authority require same, modify the order granting the privilege to mine by the hydraulic mining process so as to reduce amount thereof to meet the capacities of the facilities then in use, or if actually required in order to protect the navigable rivers from damage, may revoke same until further notice of the commission.[18]

§ 524. **Penalty for violating conditions.** That an intentional violation on the part of a mine owner or owners, company, or corporation, or the agents or employees of either, of the conditions of the order granted pursuant to section thirteen, or such modifications thereof as may have been made by said commission, shall work a forfeiture of the privileges thereby conferred, and upon notice being served by the order of said commission upon such owner or owners, company, or corporation, or agent in charge, work shall immediately cease. Said commission shall take necessary steps to enforce its orders in case of the failure, neglect, or refusal of such owner or owners, company, or corporation, or agents thereof, to comply therewith, or in the event of any person or persons, company, or corporation working by said process in said territory contrary to law.[19]

[17] 27 Stats. at L., p. 509, § 17; 5 Fed. Stats. Ann., p. 65.
[18] 27 Stats. at L., p. 509, § 18; 5 Fed. Stats. Ann., p. 65.
[19] 27 Stats. at L., p. 510, § 19; 5 Fed. Stats. Ann., p. 65.

§ 525. **Examination of mines. Report.** That said commission, or a committee therefrom, or officer of said corps assigned to duty under its orders, shall, whenever deemed necessary, visit said territory and all mines operating under the provisions of this act. A report of such examination shall be placed on file.[20]

§ 526. **Use of public lands and material. Withdrawal from sale and entry.** That the said commission is hereby granted the right to use any of the public lands of the United States, or any rock, stone, timber, trees, brush or material thereon or therein, for any of the purposes of this act; and the Secretary of the Interior is hereby authorized and requested, after notice has been filed with the commissioner of the general land-office by said commission, setting forth what public lands are required by it under the authority of this section, that such land or lands shall be withdrawn from sale and entry under the laws of the United States.[21]

§ 527. **Wilful injury to works. Violations injuring navigation. Penalty.** That any person or persons who wilfully or maliciously injure, damage, or destroy, or attempt to injure, damage, or destroy, any dam or other work erected under the provisions of this act for restraining, impounding, or settling purposes, or for use in connection therewith, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed the sum of five thousand dollars or be imprisoned not to exceed five years, or by both such fine and imprisonment, in the discretion of the court. And any person or persons, company, or corporation, their agents or employees, who shall mine by the hydraulic process directly or indirectly injuring the navigable waters of the United States, in violation of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of

[20] 27 Stats. at L., p. 510, § 20; 5 Fed. Stats. Ann., p. 66.
[21] 27 Stats. at L., p. 510, § 21; 5 Fed. Stats. Ann., p. 66.

the court: provided, that this section shall take effect on the first day of May, eighteen hundred and ninety-three.[22]

§ 528. **Tax on gross proceeds of hydraulic mines. "Débris fund" created. Advances from mine-owners.** That upon the construction by the said commission of dams or other works for the detention of débris from hydraulic mines and the issuing of the order provided for by this act to any individual, company, or corporation to work any mine or mines by hydraulic process, the individual company or corporation operating thereunder working any mine or mines by hydraulic process, the débris from which flows into or is in whole or in part restrained by such dams or other works erected by said commission, shall pay a tax of three per centum on the gross proceeds of his, their, or its mine so worked; which tax of three per centum shall be ascertained and paid in accordance with regulations to be adopted by the Secretary of the Treasury, and the Treasurer of the United States is hereby authorized to receive the same. All sums of money paid into the Treasury under this section shall be set apart and credited to a fund to be known as the "débris fund," and shall be expended by said commission under the supervision of the chief of engineers and direction of the Secretary of War, in addition to the appropriations made by law in the construction and maintenance of such restraining-works and settling-reservoirs as may be proper and necessary: provided, that said commission is hereby authorized to receive and pay into the Treasury from the owner or owners of mines worked by the hydraulic process, to whom permission may have been granted so to work under the provisions hereof, such money advances as may be offered to aid in the construction of such impounding-dams or other restraining-works, or settling-reservoirs, or sites therefor, as may be deemed necessary by said commission to protect the navigable channels of said river systems, on condition that all moneys so advanced shall be refunded as the said tax is paid into the said débris fund: and provided further, that in no event shall the government

[22] 27 Stats. at L., p. 510, § 22; 5 Fed. Stats. Ann., p. 66.

of the United States be held liable to refund same except as directed by this section.[23]

§ 529. **Consultation with state engineers.** That for the purpose of securing harmony of action and economy in expenditures in the work to be done by the United States and the state of California, respectively, the former in its plans for the improvement and protection of the navigable streams and to prevent the depositing of mining débris or other materials within the same, and the latter in its plans authorized by law for the reclamation, drainage, and protection of its lands, or relating to the working of hydraulic mines, the said commission is empowered to consult thereon with a commission of engineers of said state, if authorized by said state for said purpose, the result of such conference to be reported to the chief of engineers of the United States army, and if by him approved shall be followed by said commission.[24]

§ 530. **Restraining-dams and settling-reservoirs. To be built from special appropriations or débris fund.** That said commission, in order that such material as is now or may hereafter be lodged in the tributaries of the Sacramento and San Joaquin river systems resulting from mining operations, natural erosion, or other causes, shall be prevented from injuring the said navigable rivers or such of the tributaries of either as may be navigable and the land adjacent thereto, is hereby directed and empowered, when appropriations are made therefor by law, or sufficient money is deposited for that purpose in said débris fund, to build at such points above the head of navigation in said rivers and on the main tributaries thereof, or branches of such tributaries, or at any place adjacent to the same, which in the judgment of said commission, will effect said object (the same to be of such material as will insure safety and permanency), such restraining or impounding dams and settling-reservoirs, with such canals, locks, or other works adapted and required to

[23] 27 Stats. at L., p. 510, § 23; 5 Fed. Stats. Ann., p. 66.
[24] 27 Stats. at L., p. 511, § 24; 5 Fed. Stats. Ann., p. 67.

complete the same. The recommendations contained in executive document numbered two hundred and sixty-seven, fifty-first Congress, second session, and executive document numbered ninety-eight, forty-seventh Congress, first session, as far as they refer to impounding-dams, or other restraining-works, are hereby adopted, and the same are directed to be made the basis of operations. The sum of fifteen thousand dollars is hereby appropriated, from moneys in the Treasury not otherwise appropriated, to be immediately available to defray the expenses of said commission.[25]

§ 531. **Contracts may be made, half to be paid by state of California.** . . . For the purpose of carrying out the following provisions of the river and harbor act of eighteen hundred and ninety-six: "For the construction of restraining-barriers for the protection of the Sacramento and Feather rivers in California, two hundred and fifty thousand dollars, such restraining-barriers to be constructed under the direction of the Secretary of War in accordance with the recommendations of the California débris commission, pursuant to the provisions of, and for the purposes set forth in, section twenty-five of the act of the Congress of the United States, entitled, 'An act to create the California débris commission and regulate hydraulic mining in the state of California,' approved March first, eighteen hundred and ninety-three: provided, that the Treasurer of the United States be, and he is hereby, authorized to receive from the state of California, through the débris commission of said state, or other officer thereunto duly authorized, any and all sums of money that have been, or may hereafter be, appropriated by said state for the purposes herein set forth. And said sums when so received and hereby appropriated for the purposes above named, to be expended in the manner above provided," and for the further purpose of making available to the United States the appropriation, or any part thereof, made by the provisions of an act of the legislature of the state of California, approved March seventeenth, eighteen hundred and ninety-seven, entitled "An act to amend an act

[25] 27 Stats. at L., p. 511, § 25; 5 Fed. Stats. Ann., p. 67.

entitled 'An act to provide for the appointment, duties, and compensation of a débris commissioner, and to make appropriation to be expended under his direction in the discharge of his duties as such commissioner, approved March twenty-fourth, eighteen hundred and ninety-three.'" and of said amended act, the Secretary of War is hereby authorized, in the preparation for and construction of the proposed works authorized and appropriated for by the aforesaid provisions, to enter into an agreement that the contractor shall look solely to the state of California for one half of such expense, to be paid out of said state appropriation, and the United States shall in no manner be liable for said one half.[26]

§ 532. **Payments for work. How to be made.** . . . That the provisions of an act of Congress, entitled "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-nine, and for other purposes," approved July first, eighteen hundred and ninety-eight, authorizing the Secretary of War, in expending certain specified appropriations in the preparation for and construction of certain works for the restraining or impounding of mining débris in the state of California, to enter into a contract or contracts wherein the contractor or contractors shall look solely to that state for one half of such expense, and that the United States shall in no wise be liable for said one half, are hereby extended to any appropriations, when made, that may hereafter be made for said purposes.[27]

§ 533. **That the Secretary of War,** in carrying out the provisions of any act of Congress providing for the restraining or impounding of mining débris in California, may, in his discretion, when in his judgment the aggregate of appropriations already made by said state and Congress and available therefor are sufficient to complete the same, undertake the works necessary thereto by hired labor and by purchase

[26] 30 Stats. at L., p. 631, § 1; 5 Fed. Stats. Ann., p. 68.
[27] 30 Stats. at L., p. 1148, § 1; 5 Fed. Stats. Ann., p. 68.

of supplies and materials therefor, and may accept payments on account thereof as the work progresses under and according to the provisions of the acts of the legislature of said state for such purposes.[28]

§ 534. **Mileage in lieu of traveling expenses. . . .** That so much of the act of March third, eighteen hundred and ninety-nine, as provides that the members of the California débris commission shall receive only actual expenses in lieu of mileage while traveling on duty is hereby repealed, and hereafter the officers of the commission shall receive the mileage allowed by law.[29]

[28] Id.

[29] 31 Stats. at L., p. 631, § 1; 5 Fed. Stats. Ann., p. 69.

Power of débris commission. Decision not final when. The supreme court of the state of California, under date of January 23, 1908, in County of Sutter v. Nichols,[30] has held that this act does not purport to make the miners agents of the United States to preserve the rivers below their workings, in their present state, or to restore the rivers to a former condition. The provisions of the "act are calculated so to control and restrict the operations of the mines as to prevent the further clogging of the navigable streams by mining débris, which, otherwise, would occur, and to devise plans and means whereby hydraulic mining, so controlled and restricted, may be carried on without injury to other persons."

The provisions of the act "were never intended to give such miners full license, in case the plans prove ineffectual to prevent it, either to fill up the river channels or to commit injury to private property, by discharging débris into the streams. The commission is given power to revoke the permit, to modify the plans. This is perhaps sufficient to protect and preserve the navigable streams. At all events, that is a public matter, and the public authorities alone are authorized to act. But no power is given to the commission to redress private injuries, if any should occur. It is unnecessary to decide whether the injuries here committed and threatened constitute a taking of private property for public use, or not. We are of the opinion that while it was the purpose of the act in question to prevent such injuries, if possible, it was not intended to exonerate the miner from liability therefor, or in any respect to limit or restrict the powers of the state courts to protect private property from threatened injury and to redress inflicted injury thereto from the operation of hydraulic mines, though carried on under a permit and in strict compliance with the plans and directions of the commission, and that the act does not have that effect. The provisions of the act directing notice to be given, and authorizing a hearing at which all parties interested may appear, were not intended to conclude and estop the owners of lands below with respect to subsequent injuries that might be inflicted, but were designed to enable the commission to obtain all aid which it could derive from the suggestions of all interested persons, including those who might believe their property to be in danger, in order that it would be better advised as to the means and plans necessary to prevent injury."

[30] Should be reported in 151 Cal. and 93 Pac. Rep. 872.

CHAPTER IV.

FEDERAL STATUTES. PHILIPPINE ISLANDS.

§ 535. Mineral lands. Measurements reduced to metric system. Dollars to pesos.
§ 536. Disposal.
§ 537. Purchase, etc., by citizens. Minerals on unpatented agricultural lands.
§ 538. Locating of mineral claims. Regulations.
§ 539. Demarcation of claims.
§ 540. Marking lines of claims. Surveys.
§ 541. Removal of posts unlawful.
§ 542. Location lines.
§ 543. Restrictions. Prior claims not prejudiced.
§ 544. Claims of full size. Application and affidavit.
§ 545. Fractional claims. Declaration. Description. Sketch-plan. Innocent non-compliance with regulations.
§ 546. Difficult demarcations.
§ 547. Recording claims.
§ 548. Disputes.
§ 549. Limit of claims.
§ 550. Abandonment.
§ 551. Proofs of citizenship.
§ 552. Mining regulations. Annual labor or improvements. Relocation on non-compliance with regulations. Delinquent part-owners.
§ 553. Patents. How obtained.
§ 554. Oath, etc., of non-resident applicants.
§ 555. Adverse claims. Proceedings and determination.
§ 556. Claims upon surveyed lands. On unsurveyed lands.
§ 557. Building-stone entries.
§ 558. Petroleum, etc., entries.
§ 559. Placer claims. Limit.
§ 560. Placer claims on surveyed lands.
§ 561. Establishment of right to patent. Prior liens.
§ 562. Appointment of deputy surveyors. Expenses. Charges for surveys.
§ 563. Verification of affidavits. Testimony, etc. Contests.
§ 564. Patents of non-mineral lands, etc., for milling, etc. Mill-site patents.
§ 565. Rules for mines, etc. Bonds of deputy mineral surveyors.

§ 566. Protection to vested water rights. Damages.
§ 567. Patents subject to vested water rights.
§ 568. Establishment of land districts, etc.
§ 569. Coal-land entries.
§ 570. Preference right of entry of coal-lands.
§ 571. Declaratory statement in such case.
§ 572. Limit to entries to coal-lands. Saline-lands.
§ 573. Conflicting claims to coal-lands.
§ 574. Saline-lands. Auction and private sales.
§ 575. Mineral lands reserved from grants for public works.
§ 576. Prior mining concessions not affected.
§ 577. Future mining rights.
§ 578. Cancelation of perfected Spanish concessions.

§ 535. Mineral lands. Measurements reduced to metric system. Values to pesos. That sections twenty-two, twenty-three, twenty-four, twenty-five, twenty-nine, thirty-one, thirty-six, thirty-seven, thirty-nine, fifty-three, and fifty-eight of the act of Congress approved July first, nineteen hundred and two, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," being provisions of said act respecting mineral lands, are hereby amended by reducing all measurements therein, whether of distance, area, or value, to the metric system, to wit, feet to meters, acres to hectares, miles to kilometers, and also dollars to pesos, so that said sections when amended shall read as follows:[1]

§ 536. Disposal. That in all cases public lands in the Philippine Islands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.[2]

§ 537. Purchase, etc., by citizens. Minerals on unpatented agricultural lands. That all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation, and purchase, and the land in which they are found to occupation and purchase, by citizens of

[1] 33 Stats. at L., p. 692, § 9; 10 Fed. Stats. Ann., p. 267.
[2] 32 Stats. at L., p. 697, § 20; 5 Fed. Stats. Ann., p. 724.

the United States, or of said islands: provided, that when on any lands in said islands entered and occupied as agricultural lands under the provisions of this act, but not patented, mineral deposits have been found, the working of such mineral deposits is hereby forbidden until the person, association, or corporation who or which has entered and is occupying such lands shall have paid to the government of said islands such additional sum or sums as will make the total amount paid for the mineral claim or claims in which said deposits are located equal to the amount charged by the government for the same as mineral claims.[3]

§ 538. Locating of mineral claims. Regulations. That mining claims upon lands containing veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits located after the passage of this act, whether located by one or more persons qualified to locate the same under the preceding section, shall be located in the following manner and under the following conditions: Any person so qualified desiring to locate a mineral claim shall, subject to the provisions of this act with respect to land which may be used for mining, enter upon the same and locate a plat of ground measuring, where possible, but not exceeding three hundred meters in length by three hundred meters in breadth, in as nearly as possible a rectangular form; that is to say, all angles shall be right angles, except in cases where a boundary line of a previously surveyed claim is adopted as common to both claims, but the lines need not necessarily be meridional. In defining the size of a mineral claim it shall be measured horizontally, irrespective of inequalities of the surface of the ground.[4]

§ 539. Demarcation of claims. That a mineral claim shall be marked by two posts, placed as nearly as possible on the line of the ledge or vein, and the posts shall be numbered one and two, and the distance between posts numbered one and two shall not exceed three hundred meters, the line be-

[3] 32 Stats. at L., p. 697, § 21; 5 Fed. Stats. Ann., p. 724.
[4] 33 Stats. at L., p. 292, § 22, 10 Fed. Stats. Ann., p. 267.

tween posts numbered one and two to be known as the location line; and upon posts numbered one and two shall be written the name given to the mineral claim, the name of the locator, and the date of the location. Upon post numbered one there shall be written in addition to the foregoing, "Initial post," the approximate compass-bearing of post numbered two, and a statement of the number of meters lying to the right and to the left of the line from post numbered one to post numbered two, thus: "Initial post. Direction of post numbered two —— meters of this claim lie on the right and —— meters on the left of the line from number one to number two post." All the particulars required to be put on number one and number two posts shall be furnished by the locator to the provincial secretary, or such other officer as by the Philippine government may be described as mining recorder, in writing, at the time the claim is recorded, and shall form a part of the record of such claim.[5]

EXAMPLES OF VARIOUS MODES OF LAYING OUT CLAIMS.[6]

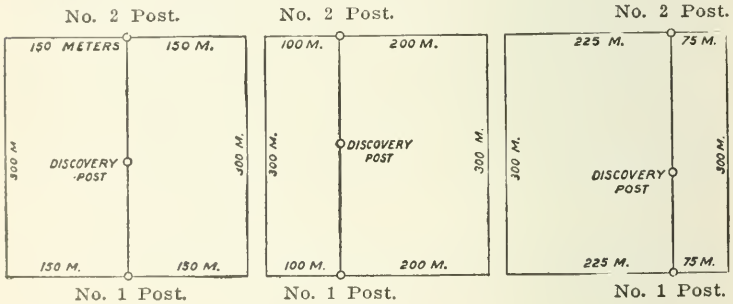

Fig. 11.

§ 540. **Marking lines of claims. Surveys.** That when a claim has been located the holder shall immediately mark the line between posts numbered one and two so that it can be distinctly seen. The locator shall also place a post at the point where he has found minerals in place, on which shall

[5] 33 Stats. at L., p. 693, § 23; 10 Fed. Stats. Ann., p. 268.

[6] See, for illustration of examples of various modes of laying out claims, 10 Fed. Stats. Ann., p. 269.

be written "Discovery-post": provided, that when the claim is surveyed the surveyor shall be guided by the records of the claim, the sketch-plan on the back of the declaration made by the owner when the claim was recorded, posts numbered one and two, and the notice on number one, the initial post.[7]

§ 541. **Removal of posts unlawful.** That it shall not be lawful to move number one post, but number two post may be moved by the deputy mineral surveyor when the distance between posts numbered one and two exceeds three hundred meters, in order to place number two post three hundred meters from number one post on the line of the location. When the distance between posts numbered one and two is less than three hundred meters, the deputy mineral surveyor shall have no authority to extend the claim beyond number two.[8]

§ 542. **Location lines.** That the "location line" shall govern the direction of one side of the claim, upon which the survey shall be extended according to this act.[9]

§ 543. **Restrictions. Prior claims not prejudiced.** That the holder of a mineral claim shall be entitled to all minerals which may lie within his claim, but he shall not be entitled to mine outside the boundary lines of his claim continued vertically downward: provided, that this act shall not prejudice the rights of claim-owners nor claim-holders whose claims have been located under existing laws prior to this act.[10]

§ 544. **Claims of full size. Application and affidavit.** That no mineral claim of the full size shall be recorded without the application being accompanied by an affidavit made by the applicant or some person on his behalf cognizant of the

[7] 33 Stats. at L., p. 693, § 24; 10 Fed. Stats. Ann., p. 268.
[8] 33 Stats. at L., p. 693, § 25; 10 Fed. Stats. Ann., p. 269.
[9] 32 Stats. at L., p. 698, § 26; 5 Fed. Stats. Ann., p. 726.
[10] 32 Stats. at L., p. 698, § 27; 5 Fed. Stats. Ann., p. 726.

facts — that the legal notices and posts have been put up; that mineral has been found in place on the claim proposed to be recorded; that the ground applied for is unoccupied by any other person. In the said declaration shall be set out the name of the applicant and the date of the location of the claim. The words written on the number one and number two posts shall be set out in full, and as accurate a description as possible of the position of the claim given with reference to some natural object or permanent monuments.[11]

§ 545. **Fractional claims. Declaration. Description. Sketch-plan. Innocent non-compliance with regulations.** That no mineral claim, which, at the date of its record, is known by the locator to be less than a full-sized mineral claim, shall be recorded without the word "fraction" being added to the name of the claim, and the application being accompanied by an affidavit or solemn declaration made by the applicant or some person on his behalf cognizant of the facts: that the legal posts and notices have been put up; that mineral has been found in place on the fractional claim proposed to be recorded; that the ground applied for is unoccupied by any other person. In the said declaration shall be set out the name of the applicant and the date of the location of the claim. The words written on the posts numbered one and two shall be set out in full, and as accurate a description as possible of the position of the claim given. A sketch-plan shall be drawn by the applicant on the back of the declaration, showing as near as may be the position of the adjoining mineral claims and the shape and size, expressed in meters, of the claim or fraction desired to be recorded: provided, that the failure on the part of the locator of a mineral claim to comply with any of the foregoing provisions of this section shall not be deemed to invalidate such location if, upon the facts, it shall appear that such locator has actually discovered mineral in place on

[11] 32 Stats. at L., p. 699, § 28; 5 Fed. Stats. Ann., p. 726.

said location and that there has been on his part a bona fide attempt to comply with the provisions of this act, and that the non-observance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity.[12]

§ 546. **Difficult demarcations.** That in cases where, from the nature or shape of the ground, it is impossible to mark the location line of the claim as provided by this act then the claim may be marked by placing posts as nearly as possible to the location line, and noting the distance and direction such posts may be from such location line, which distance and direction shall be set out in the record of the claim.[13]

§ 547. **Recording claims.** That every person locating a mineral claim shall record the same with the provincial secretary, or such other officer as by the government of the Philippine Islands may be described as mining recorder of the district within which same is situate, within thirty days after the location thereof. Such record shall be made in a book to be kept for the purpose in the office of the said provincial secretary or such other officer as by said government [may be] described as mining recorder, in which shall be inserted the name of the claim, the name of each locator, the locality of the mine, the direction of the location line, the length in meters, the date of location, and the date of the record. A claim which shall not have been recorded within the prescribed period shall be deemed to have been abandoned.[14]

§ 548. **Disputes.** That in case of any dispute as to the location of a mineral claim the title to the claim shall be recognized according to the priority of such location, subject to any question as to the validity of the record itself and subject

[12] 33 Stats. at L., p. 693, § 29; 10 Fed. Stats. Ann., p. 269.
[13] 32 Stats. at L., p. 699, § 30; 5 Fed. Stats. Ann., p. 727.
[14] 33 Stats. at L., p. 694, § 31; 10 Fed. Stats. Ann., p. 270.

to the holder having complied with all the terms and conditions of this act.[15]

§ 549. **Limit of claims.** That no holder shall be entitled to hold in his, its, or their own name or in the name of any other person, corporation, or association more than one mineral claim on the same vein or lode.[16]

§ 550. **Abandonment.** That a holder may at any time abandon any mineral claim by giving notice, in writing, of such intention to abandon, to the provincial secretary or such other officer as by the government of the Philippine Islands may be described as mining recorder; and from the date of the record of such notice all his interest in such claim shall cease.[17]

§ 551. **Proofs of citizenship.** That proof of citizenship under the clauses of this act relating to mineral lands may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any state or territory thereof, or of the Philippine Islands, by the filing of a certified copy of their charter or certificate of incorporation.[18]

§ 552. **Mining regulations. Annual labor or improvements. Relocation on non-compliance with regulations. Delinquent part-owners.** That the United States Philippine commission or its successors may make regulations, not in conflict with the provisions of this act, governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, subject to the following requirements: On each claim located after the passage of this act, and

[15] 32 Stats. at L., p. 699, § 32; 5 Fed. Stats. Ann., p. 727.
[16] 32 Stats. at L., p. 700, § 33; 5 Fed. Stats. Ann., p. 727.
[17] 32 Stats. at L., p. 700, § 34; 5 Fed. Stats. Ann., p. 727.
[18] 32 Stats. at L., p. 700, § 35; 5 Fed. Stats. Ann., p. 728.

until a patent has been issued therefor, not less than two hundred pesos' worth of labor shall be performed or improvements made during each year: provided, that upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required thereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owners personal notice in writing, or notice by publication in the newspaper published nearest the claim, and in two newspapers published at Manila, one in the English language and the other in the Spanish language, to be designated by the chief of the Philippine insular bureau of public lands, for at least once a week for ninety days, and if, at the expiration of ninety days after such notice in writing or by publication, such delinquent shall fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim.[19]

§ 553. **Patents. How obtained.** That a patent for any land claimed and located for valuable mineral deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this act, having claimed and located a piece of land for such purposes, who has or have complied with the terms of this act, may file in the office of the provincial secretary, or such other officer as by the government of said islands may be

[19] 33 Stats. at L., p. 694, § 36; 10 Fed. Stats. Ann., p. 270.

described as mining recorder of the province wherein the land claimed is located, an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the chief of the Philippine insular bureau of public lands, showing accurately the boundaries of the claim, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such office, and shall thereupon be entitled to a patent for the lands, in the manner following: The provincial secretary, or such other officer as by the Philippine government may be described as mining recorder, upon the filing of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such an application has been made, once a week for the period of sixty days, in a newspaper to be by him designated as nearest to such claim, and in two newspapers published at Manila, one in the English language and one in the Spanish language, to be designated by the chief of the Philippine insular bureau of public lands; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter within the sixty days of application, shall file with the provincial secretary, or such other officer as by the Philippine government may be described as mining recorder, a certificate of the chief of the Philippine insular bureau of public lands that one thousand pesos' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publica-

tion. If no adverse claim shall have been filed with the provincial secretary, or such other officer as by the government of said islands may be described as mining recorder, at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent upon the payment to the provincial treasurer, or the collector of internal revenue, of twenty-five pesos per hectare, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this act, provided, that where the claimant for a patent is not a resident of or within the province wherein the land containing the vein, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent where said agent is conversant with the facts sought to be established by said affidavits.[20]

§ 554. **Oath, etc., of non-resident applicants.** That applicants for mineral patents, if residing beyond the limits of the province or military department wherein the claim is situated, may make the oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any province of the Philippine Islands, or any other official in said islands authorized by law to administer oaths.[21]

§ 555. **Adverse claims. Proceedings and determination.** That where an adverse claim is filed during the period of publication it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavits thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent juris-

[20] 33 Stats. at L., p. 695, § 37, 10 Fed. Stats. Ann., p. 270.
[21] 32 Stats. at L., p. 701, § 38; 5 Fed. Stats. Ann., p. 729.

diction or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession and prosecute the same with reasonable diligence to final judgment, and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the provincial secretary, or such other officer as by the government of the Philippine Islands may be described as mining recorder, together with the certificate of the chief of the Philippine insular bureau of public lands that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the provincial treasurer or the collector of internal revenue of the province in which the claim is situated, as the case may be, twenty-five pesos per hectare for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the provincial secretary, or such other officer as by said government may be described as mining recorder, to the secretary of the interior of the Philippine Islands, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, rightly to possess. The adverse claim may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated, and the adverse claimant, if residing or at the time being beyond the limits of the province wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record, or any notary public of any province or military department of the Philippine Islands, or any other officer authorized to administer oaths where the adverse claimant may then be. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the

proper fees, and file the certificate and description by the chief of the Philippine insular bureau of public lands, whereupon the provincial secretary or such other officer as by the government of said islands may be described as mining recorder shall certify the proceedings and judgment-roll to the secretary of the interior for the Philippine Islands, as in the preceding case, and patents shall issue to the several parties according to their respective rights. If, in any action brought pursuant to this section, title to the ground in controversy shall not be established by either party, the court shall so find, and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the office of the provincial secretary or such other officer as by the government of said islands may be described as mining recorder or be entitled to a patent for the ground in controversy until he shall have perfected his title. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.[22]

§ 556. **Claims upon surveyed lands. On unsurveyed lands.** That the description of mineral claims upon surveyed lands shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands the chief of the Philippine insular bureau of public lands in extending the surveys shall adjust the same to the boundaries of such patented claim according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.[23]

§ 557. **Building-stone entries.** That any person authorized to enter lands under this act may enter and obtain patent to lands that are chiefly valuable for building-stone under the provisions of this act relative to placer mineral claims.[24]

[22] 33 Stats. at L., p. 695, § 39; 10 Fed. Stats. Ann., p. 271.
[23] 32 Stats. at L., p. 702, § 40; 5 Fed. Stats. Ann., p. 730.
[24] 32 Stats. at L., p. 702, § 41; 5 Fed. Stats. Ann., p. 730.

§ 558. **Petroleum, etc., entries.** That any person authorized to enter lands under this act may enter and obtain patent to lands containing petroleum or other mineral oils and chiefly valuable therefor under the provisions of this act relative to placer mineral claims.[25]

§ 559. **Placer claims. Limit.** That no location of a placer claim shall exceed sixty-four hectares for any association of persons, irrespective of the number of persons composing such association, and no such location shall include more than eight hectares for an individual claimant. Such locations shall conform to the laws of the United States Philippine commission, or its successors, with reference to public surveys, and nothing in this section contained shall defeat or impair any bona fide ownership of land for agricultural purposes or authorize the sale of the improvements of any bona fide settler to any purchaser.[26]

§ 560. **Placer claims on surveyed lands.** That where placer claims are located upon surveyed lands and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims located after the date of passage of this act shall conform as nearly as practicable to the Philippine system of public-land surveys and the regular subdivisions of such surveys; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than sixteen hectares shall remain, such fractional portion of agricultural land may be entered by any party qualified by law for homestead purposes.[27]

§ 561. **Establishment of right to patent. Prior liens.** That where such person or association, they and their gran-

[25] 32 Stats. at L., p. 702, § 42; 5 Fed. Stats. Ann., p. 731.
[26] 32 Stats. at L., p. 702, § 43; 5 Fed. Stats. Ann., p. 731.
[27] 32 Stats. at L., p. 703, § 44; 5 Fed. Stats. Ann., p. 731.

tors have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent.[28]

§ 562. **Appointment of deputy surveyors. Expenses. Charges for surveys.** That the chief of the Philippine insular bureau of public lands may appoint competent deputy mineral surveyors to survey mining claims. The expenses of the survey of vein or lode claims and of the survey of placer claims, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any such deputy mineral surveyor to make the survey. The chief of the Philippine insular bureau of public lands shall also have power to establish maximum charges for surveys and publication of notices under this act; and in case of excessive charges for publication he may designate any newspaper published in a province where mines are situated, or in Manila, for the publication of mining notices and fix the rates to be charged by such paper; and to the end that the chief of the bureau of public lands may be fully informed on the subject such applicant shall file with the provincial secretary, or such other officer as by the government of the Philippine Islands may be described as mining recorder, a sworn statement of all charges and fees paid by such applicant for publication and surveys, and of all fees and money paid the provincial treasurer or the collector of internal revenue, as the case may be, which statement shall be transmitted, with the other papers in the case, to the secretary of the interior for the Philippine Islands.[29]

[28] 32 Stats. at L., p. 703, § 45; 5 Fed. Stats. Ann., p. 731.
[29] 32 Stats. at L., p. 703, § 46; 5 Fed. Stats. Ann., p. 731.

§ 563. **Verification of affidavits. Testimony, etc. Contests.** That all affidavits required to be made under this act may be verified before any officer authorized to administer oaths within the province or military department where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the proper provincial secretary or such other officer as by the government of the Philippine Islands may be described as mining recorder. In cases of contest as to the mineral or agricultural character of land the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication at least once a week for thirty days in a newspaper to be designated by the provincial secretary or such other officer as by said government may be described as mining recorder published nearest to the location of such land and in two newspapers published in Manila, one in the English language and one in the Spanish language, to be designated by the chief of the Philippine insular bureau of public lands; and the provincial secretary or such other officer as by said government may be described as mining recorder shall require proofs that such notice has been given.[30]

§ 564. **Patents of non-mineral lands, etc., for milling, etc. Mill-site patents.** That where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location of such non-adjacent land shall exceed two hectares, and payment for

[30] 32 Stats. at L., p. 703, § 47; 5 Fed. Stats. Ann., p. 732.

the same must be made at the same rate as fixed by this act for the superficies of the lode. The owner of a quartz-mill or reduction-works not owning a mine in connection therewith may also receive a patent for his mill site as provided in this section.[31]

§ 565. Rules for mines, etc. Bonds of deputy mineral surveyors. That as a condition of sale the government of the Philippine Islands may provide rules for working, policing, and sanitation of mines, and rules concerning easements, drainage, water rights, right of way, right of government survey and inspection, and other necessary means to their complete development not inconsistent with the provisions of this act, and those conditions shall be fully expressed in the patent. The Philippine commission or its successors are hereby further empowered to fix the bonds of deputy mineral surveyors.[32]

§ 566. Protection to vested water rights. Damages. That whenever by priority of possession rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same, and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed, but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.[33]

§ 567. Patents subject to vested water rights. That all patents granted shall be subject to any vested and accrued

[31] 32 Stats. at L., p. 704, § 48; 5 Fed. Stats. Ann., p. 732.
[32] 32 Stats. at L., p. 704, § 49; 5 Fed. Stats. Ann., p. 732.
[33] 32 Stats. at L., p. 704, § 50; 5 Fed. Stats. Ann., p. 732.

water rights, or rights to ditches and reservoirs used in connection with such water rights as may have been acquired under or recognized by the preceding section.[34]

§ 568. **Establishment of land districts, etc.** That the government of the Philippine Islands is authorized to establish land districts and provide for the appointment of the necessary officers wherever they may deem the same necessary for the public convenience, and to further provide that in districts where land-offices are established proceedings required by this act to be had before provincial officers shall be had before the proper officers of such land-offices.[35]

§ 569. **Coal-land entries.** That every person above the age of twenty-one years who is a citizen of the United States or of the Philippine Islands, or who has acquired the right of a native of said islands under and by virtue of the Treaty of Paris, or any association of persons severally qualified as above, shall, upon application to the proper provincial treasurer, have the right to enter any quality of vacant coal-lands of said islands, not otherwise appropriated or reserved by competent authority, not exceeding sixty-four hectares to such individual person, or one hundred and twenty-eight hectares to such association upon payment to the provincial treasurer or the collector of internal revenue, as the case may be, of not less than fifty pesos per hectare for such lands, where the same shall be situated more than twenty-five kilometers from any completed railroad or available harbor or navigable stream, and not less than one hundred pesos per hectare for such lands as shall be within twenty-five kilometers of such road, harbor, or stream: provided, that such entries shall be taken in squares of sixteen or sixty-four hectares, in conformity with the rules and regulations governing the public-land surveys of the said islands in plotting legal subdivisions.[36]

[34] 32 Stats. at L., p. 704, § 51; 5 Fed. Stats. Ann., p. 733.
[35] 32 Stats. at L., p. 704, § 52; 5 Fed. Stats. Ann., p. 733.
[36] 33 Stats. at L., p. 696, § 53; 10 Fed. Stats. Ann., p. 272.

§ 570. **Preference right of entry of coal-lands.** That any person or association of persons, severally qualified as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry under the preceding section of the mines so opened and improved.[37]

§ 571. **Declaratory statement in such case.** That all claims under the preceding section must be presented to the proper provincial secretary within sixty days after the date of actual possession and the commencement of improvements on the land by the filing of a declaratory statement therefor; and where the improvements shall have been made prior to the expiration of three months from the date of the passage of this act, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement; and no sale under the provisions of this act shall be allowed until the expiration of six months from the date of the passage of this act.[38]

§ 572. **Limit to entries to coal-lands. Saline-lands.** That the three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons, any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such section shall enter or hold any other lands under their provisions; and all persons claiming under section fifty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice or to pay for the

[37] 32 Stats. at L., p. 705, § 54; 5 Fed. Stats. Ann., p. 733.
[38] 32 Stats. at L., p. 705, § 55; 5 Fed. Stats. Ann., p. 733.

land within the required period, the same shall be subject to entry by any other qualified applicant.[39]

§ 573. **Conflicting claims to coal-lands.** That in case of conflicting claims upon coal-lands where the improvements shall be commenced after the date of the passage of this act, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the passage of this act, division of the land claimed may be made by legal subdivisions, which shall conform as nearly as practicable with the subdivisions of land provided for in this act, to include as near as may be the valuable improvements of the respective parties. The government of the Philippine Islands is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and preceding sections relating to mineral lands.[40]

§ 574. **Saline-lands. Auction and private sales.** That whenever it shall be made to appear to the secretary of any province or the commander of any military department in the Philippine Islands that any lands within the province are saline in character, it shall be the duty of said provincial secretary or commander, under the regulations of the government of the Philippine Islands, to take testimony in reference to such lands, to ascertain their true character, and to report the same to the secretary of the interior for the Philippine Islands; and if upon such testimony the secretary of the interior shall find that such lands are saline and incapable of being purchased under any of the laws relative to the public domain, then and in such case said lands shall be offered for sale at the office of the provincial secretary, or such other officer as by the said government may be described as mining recorder of the province or department in which the same shall be situated, as the case

[39] 32 Stats. at L., p. 705, § 56; 5 Fed. Stats Ann., p. 733.
[40] 32 Stats. at L., p. 705, § 57; 5 Fed. Stats. Ann., p. 734.

may be, under such regulations as may be prescribed by said government and sold to the highest bidder for cash at a price of not less than six pesos per hectare; and in case such lands fail to sell when so offered, then the same shall be subject to private sale at such office, for cash, at a price not less than six pesos per hectare, in the same manner as other lands in the said islands are sold. All executive proclamations relating to the sales of public saline-lands shall be published in only two newspapers, one printed in the English language and one in the Spanish language, at Manila, which shall be designated by said secretary of the interior.[41]

§ 575. **Mineral lands reserved from grants for public works.** That no act granting lands to provinces, districts, or municipalities to aid in the construction of roads, or for other public purposes, shall be so construed as to embrace mineral lands, which, in all cases, are reserved exclusively, unless otherwise specially provided in the act or acts making the grant.[42]

§ 576. **Prior mining concessions not affected.** That nothing in this act shall be construed to affect the rights of any person, partnership, or corporation having a valid, perfected mining concession granted prior to April eleventh, eighteen hundred and ninety-nine, but all such concessions shall be conducted under the provisions of the law in force at the time they were granted, subject at all times to cancelation by reason of illegality in the procedure by which they were obtained, or for failure to comply with the conditions prescribed as requisite to their retention in the laws under which they were granted: provided, that the owner or owners of every such concession shall cause the corners made by its boundaries to be distinctly marked with permanent monuments within six months after this act has been promulgated in the Philippine Islands, and that any

[41] 33 Stats. at L., p. 697, § 58; 10 Fed. Stats. Ann., p. 273.
[42] 32 Stats. at L., p. 706, § 59; 5 Fed. Stats. Ann., p. 734.

concessions the boundaries of which are not so marked within this period shall be free and open to explorations and purchase under the provisions of this act.[43]

§ 577. **Future mining rights.** That mining rights on public lands in the Philippine Islands shall, after the passage of this act, be acquired only in accordance with its provisions.[44]

§ 578. **Cancelation of perfected Spanish concessions.** That all proceedings for the cancelation of perfected Spanish concessions shall be conducted in the courts of the Philippine Islands having jurisdiction of the subject-matter and of the parties, unless the United States Philippine commission, or its successors, shall create special tribunals for the determination of such controversies.[45]

[43] 32 Stats. at L., p. 706, § 60; 5 Fed. Stats. Ann., p. 735.
[44] 32 Stats. at L., p. 706, § 61; 5 Fed. Stats. Ann., p. 735.
[45] 32 Stats. at L., p. 706, § 62; 5 Fed Stats. Ann., p. 735.

CHAPTER V.

UNITED STATES LAND-OFFICE RULES AND REGULATIONS.

PART I. RULES AND REGULATIONS, INCLUDING AMENDMENTS.[1]

§ 579. Nature and extent of mining claims.
§ 580. Lode claims.
§ 581. Tunnels.
§ 582. Placer claims.
§ 583. Same. Amendments to rules (paragraphs 22, 23, and 24).
§ 584. Same. Placer claims (continued).
§ 585. Regulations under saline act.
§ 586. Procedure to obtain patent to mineral lands. Lode claims.
§ 587. Same. Amendments to rules (paragraph 34).
§ 588. Same. Lode claims (continued).
§ 589. Same. Placer claims.
§ 590. Same. Mill sites.
§ 591. Same. Citizenship.
§ 592. Same. Necessity of proper proofs.
§ 593. Possessory right.
§ 594. Adverse claims.
§ 595. Appointment of deputies for survey of mining claims. Charges for surveys and publications. Fees of registers and receivers, etc.
§ 596. Hearing to determine character of lands.
§ 597. District of Alaska.
§ 598. Mineral lands within forest reserves.
§ 599. Surveys of mining claims. General provisions.
§ 600. Same. Survey, how made.
§ 601. Same. Amendment to rules (paragraph 147).
§ 602. Same. Survey, how made (continued).

PART II. RULES AND REGULATIONS OF LAND DEPARTMENT CONCERNING COAL-LANDS.

§ 603. Coal-lands and regulations. Generally.
§ 604. Same. Coal-lands in Alaska.

[1] Rules and Regulations of the Department of the Interior, the General Land-Office, and the United States District Land-Offices, Relative to the Reservation, Exploration, Location, Possession, Purchase, and Patenting of the Mineral Lands in the Public Domain, approved July 26, 1901, and reapproved December 23, 1903, and Amendments approved August 8, 1904, December 23, 1904, and November 20, 1905, and reapproved with amendments May 21, 1907. Land Dec. —

§ 605. Same. Instructions to register and receiver, Juneau, Alaska.
§ 606. Same. Supplemental regulations. Instructions to registers and receivers. Coal-lands.
§ 607. Same. Lands not "coal-lands."
§ 608. Same. Action required by special agents.
§ 609. Same. Supplemental regulations. [Additional.]
§ 610. Same. Coal-lands. Mineral.
§ 611. Same. Application to purchase coal-land.
§ 612. Same. Coal-land. Affidavit.

PART III. RECOGNITION OF AGENTS AND ATTORNEYS BEFORE DISTRICT LAND-OFFICES.

§ 613. Regulations.

PART I. RULES AND REGULATIONS, INCLUDING AMENDMENTS.

§ 579. Nature and extent of mining claims. 1. Mining claims are of two distinct classes: Lode claims and placers.

§ 580. Lode claims. 2. The status of lode claims located or patented previous to the 10th day of May, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

3. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

4. From and after the 10th May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of fifteen hundred linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may

make joint location of such claim of fifteen hundred feet, but in no event can a location of a vein or lode made after the 10th day of May, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

5. With regard to the extent of surface-ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case exceed three hundred feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond three hundred feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery-shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface-ground of that width can be taken depends upon the local regulations or state or territorial laws in force in the several mining districts; and that no such local regulations or state or territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims existing

or the 10th day of May, 1872, render such lateral limitations necessary.

7. Locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

8. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

9. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery-shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

10. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface-ground, and at the point of discovery or discovery-

shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery; it being essential that the location-notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

11. The location-notice must be filed for record in all respects as required by the state or territorial laws and local rules and regulations, if there be any.

12. In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that ten dollars shall be expended annually in labor or improvements for each one hundred feet in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Where a number of claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim.

13. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

14. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

15. Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor or made the

improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

§ 581. **Tunnels.** 16. The effect of section 2323, Revised Statutes, is to give the proprietors of a mining-tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

17. To avail themselves of the benefits of this provision of law, the proprietors of a mining-tunnel will be required, at the time they enter cover as aforesaid, to give proper

notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

18. At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

§ 582. **Placer claims.** 19. But one discovery of mineral is required to support a placer location, whether it be of

twenty acres by an individual, or of one hundred and sixty acres or less by an association of persons.

20. The act of August 4, 1892, extends the mineral-land laws so as to bring lands chiefly valuable for building-stone within the provisions of said law by authorizing a placer entry of such lands. Registers and receivers should make a reference to said act on the entry-papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. Lands reserved for the benefit of public schools or donated to any state are not subject to entry under said act.

21. The act of February 11, 1897, provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.

§ 583. **Same. Amendments to rules (paragraphs 22, 23, and 24).** Paragraphs 22, 23 and 24 of the Mining Regulations, approved December 18, 1903,[2] were on November 16, 1905, by the Secretary of the Interior, in the case of the Roman Placer, Pueblo, Colo., mineral entry No. 3022, severally revoked, and the following substituted in lieu thereof:[3]

22. By section 2330 authority is given for subdividing forty-acre legal subdivisions into ten-acre tracts. These ten-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such ten-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

23. In subdividing forty-acre legal subdivisions, the ten-acre tracts must be in square form, with lines at right angles with the lines of the public surveys; and the notice given of the application must be specific and accurate in description.

24. A ten-acre subdivision may be described, for instance, if situated in the extreme northeast of the section, as the

[2] 31 Land Dec. 477, 478.
[3] 34 Land Dec. 260.

"NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but, in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

As amended Nov. 20, 1905.[4]

[Signed] J. H. Fimple, Acting Commissioner.

§ 584. Same. Placer claims (continued). 25. The proof of improvements must show their value to be not less than five hundred dollars and that they were made by the applicant for patent or his grantors. This proof should consist of the affidavit of two or more disinterested witnesses. The annual expenditure to the amount of $100, required by section 2324, Revised Statutes, must be made upon placer claims as well as lode claims.

26. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent, and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field-notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

27. By section 2330 it is declared that no location of a placer claim, made after July 9, 1870, shall exceed one hun-

[4] 34 Land Dec. 260.

dred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

28. Section 2331 provides that all placer mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than twenty acres for each individual claimant.

29. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed twenty acres for each individual participating therein; that is, a location by two persons cannot exceed forty acres, and one by three persons cannot exceed sixty acres.

30. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that all placer mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

§ 585. **Regulations under saline act.** 31. Under the act approved January 31, 1901, extending the mining laws to saline-lands, the provisions of the law relating to placer mining claims are extended to all states and territories and the district of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt-springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder."

32. Rights obtained by location under the placer mining

laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: provided, he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

33. In order that the conditions imposed by the proviso, as set forth in the above paragraph, may duly appear, the notice of location presented for record and the application for patent must each contain a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. Assignments made by persons who are not severally qualified as herein stated will not be recognized.

§ 586. Procedure to obtain patent to mineral lands. Lode claims. 34. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the surveyor-general of the state or territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field-notes in each case will be prepared by the surveyor-general; one plat and the original field-notes to be retained in the office of the surveyor-general, one copy of the plat to be given the claimant for posting upon the claim, one plat and a copy of the field-notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor-general to the register of the proper land district, to be retained on his files for future reference. As there is no resident surveyor-general for the state of

Arkansas, applications for the survey of mineral claims in said state should be made to the commissioner of this office, who, under the law, is ex officio the United States surveyor-general.

35. The survey and plat of mineral claims required to be filed in the proper land-office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the state or territory or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a United States deputy surveyor such location survey cannot be substituted for that required by the statute, as above indicated.

36. The surveyors-general should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field-notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than two miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than two miles in length, and should be measured on the ground direct between the points, or calculated from actually surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within two miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line or traverse line must be surveyed by the deputy mineral surveyor at the time of his making the particular survey, and be made a part thereof.

§ 587. **Same. Amendments to rules.** Paragraph 37 of the Mining Regulations, approved December 18, 1903, was, on December 23, 1904, amended by the Secretary of the Interior to read as follows:

37. (a) Promptly upon the approval of a mineral survey the surveyor-general will advise both this office and the appropriate local land-office, by letter (Form 4—286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the locus of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey: but hereafter no segregation of any such claim upon the official township-survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by this office.

(b) When an application to make agricultural entry of the residue of any original lot or legal subdivision of forty acres, reduced by mining claims for which patent applications have been filed and which residue has been already relotted in accordance therewith, the local officers will accept and approve the application as usual, if found to be regular. When such an application is filed for any such original lot or subdivision, reduced in available area by duly asserted mining claims but not yet relotted accordingly, the local officers will promptly advise this office thereof; and will also report and identify any pending application for mineral patent, affecting such subdivision, which the agricultural applicant does not desire to contest. The surveyor-general will thereupon be advised by this office of such mining claims, or portions thereof, as are proper to be segregated and directed to at once prepare, upon the usual drawing-paper township blank, diagram of amended township survey of such original lot or legal forty-acre subdivision so made fractional by such mineral segregation, designating the agricultural portion by appropriate lot num-

ber, beginning with No. 1 in each section and giving the area of each lot, and will forthwith transmit one approved copy to the local land-office and one to this office. In the mean time the local officers will accept the agricultural application (if no other objection appears), suspend it with reservation of all rights of the applicant if continuously asserted by him, and upon receipt of amended township diagram will approve the application (if then otherwise satisfactory) as of the date of filing, corrected to describe the tract as designated in the amended survey.

(c) The register and receiver will allow no agricultural claim for any portion of an original lot or legal forty-acre subdivision, where the reduced area is made to appear by reason of approved surveys of mining claims and for which applications for patent have not been filed, until there is submitted by such agricultural applicant a satisfactory showing that such surveyed claims are in fact mineral in character; and applications to have lands asserted to be mineral, or mining locations, segregated by survey with the view to agricultural appropriation of the remainder, will be made to the register and receiver for submission to the commissioner of the general land-office, for his consideration and direction, and must be supported by the affidavit of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required in any case, that the lands sought to be segregated as mineral are in fact mineral in character: otherwise, in the absence of satisfactory showing in any such case, such original lot or legal subdivision will be subject to agricultural appropriation only. When any such showing shall be found to be satisfactory and the necessary survey is had, amended township diagram will be required and made as prescribed in the preceding section.

As amended Dec. 23, 1904.[5]

[Signed] W. A. Richards, Commissioner.

§ 588. **Same. Lode claims (continued).** 38. The following particulars should be observed in the survey of every mining claim:

[5] 33 Land Dec. 366.

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field-notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field-notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres.
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.48

It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field-notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

39. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat of survey. Too much care cannot be exercised in the preparation of this notice, inasmuch as the data therein are to be

repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

40. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat and the field-notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the notice so posted to be attached to and form a part of said affidavit.

41. Accompanying the field-notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, state, or territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.

42. This sworn statement must be supported by a copy of each location-notice, certified by the legal custodian of the record thereof, and also by an abstract of title of each claim, completed to the date of filing said statement and certified by the legal custodian of the records of transfers, or by a duly authorized abstracter of titles. The certificate must state that no conveyances affecting the title to the claim or claims appear of record other than those set forth.

Abstracters will be required to attach to each abstract certified by them a certificate stating that they have filed in the office of the commissioner of the general land-office a certified copy of the existing statute by which they are authorized to compile abstracts of title, and evidence in the form of a certificate by the proper state, territorial, or county officer that they have complied with the requirements of such statute.[5a]

[5a] 36 Land Dec. 225. Par. 42 approved Dec. 28, 1907.

43. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

44. Before receiving and filing an application for mineral patent local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any lands embraced in a railroad selection, or for which publication is pending or has been made by any other claimants, and if, in their opinion, after investigation, it should appear that a mineral application should not, for these or other reasons, be accepted and filed, they should formally reject the same, giving the reasons therefor, and allow the applicant thirty days for appeal to this office under the Rules of Practice.

As amended May 21, 1907.[6]

45. Upon the receipt of these papers, if no reason appears for rejecting the application, the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, nine consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

46. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In

[6] Circular approved May 21, 1907 p. 39.

addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field-notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

47. The register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

48. The claimant at the time of filing the application for patent, or at any time within the sixty days of publication, is required to file with the register, a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several locations held in common, that an amount equal to five hundred dollars for each location, has been so expended upon, and for the benefit of, the entire group: that the plat filed by the claimant is correct; that the field-notes of the survey, as filed, furnish such an accurate description of the claims as will if incorporated in a patent serve to fully identify the premises and that such reference is made herein to natural objects or permanent monuments as will perpetuate and fix the locus thereof: provided, that as to all applications for patent made and passed to entry before July 1, 1898, or which are by protests or adverse claims prevented from being passed to entry before that time, where the application embraces several locations held in common, proof of an expenditure of five hundred dollars upon the group will be sufficient and an expenditure of that amount need not be shown to have been made upon, or for the benefit of, each location embraced in the application.

49. The surveyor-general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from his deputy who makes the actual survey and examination upon the premises, and

such deputy should specify with particularity and full detail the character and extent of such improvements.

50. It will be the more convenient way to have this certificate indorsed by the surveyor-general, both upon the plat and field-notes of survey filed by the claimant as aforesaid.

51. After the sixty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

52. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, permit the claimant to pay for the land according to the area given in the plat and field-notes of survey aforesaid, at the rate of five dollars for each acre and five dollars for each fractional part of an acre, except as otherwise provided by law, the receiver issuing the usual duplicate receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land-office, after which the complete record will be forwarded to the commissioner of the general land-office and a patent issued thereon if found regular.

53. At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in a matter which would avoid the claim. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such

protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes.[7]

54. Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

55. The annual expenditure of one hundred dollars in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes, is solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

56. The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

57. The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

§ 589. **Same. Placer claims.** 58. The proceedings to obtain patents for placer claims, including all forms of mineral

[7] See Turner v. Sawyer, 150 U. S. 578-586.

deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

59. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter, and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; placer claims being fixed, however, at two dollars and fifty cents per acre, or fractional part of an acre.

60. In placer applications for patent care must be exercised to determine the proper classification of the lands claimed. To this end the clearest evidence of which the case is capable should be presented.

(1) If the claim be all placer-ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(2) Deputy surveyors shall, at the expense of the parties, make full examination of all placer claims surveyed by them, and duly note the facts as specified in the law, stating the quality and composition of the soil, the kind and amount of timber and other vegetation, the locus and size of streams, and such other matters as may appear upon the surface of the claim. This examination should include the character and extent of all surface and underground workings, whether placer or lode, for mining purposes.

(3) In addition to these data, which the law requires to be shown in all cases, the deputy should report with reference to the proximity of centers of trade or residence; also of well-known systems of lode deposit or of individual lodes. He should also report as to the use or adaptability of the claim for placer mining; whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose; and, finally, what works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

(4) This examination should be reported by the deputy under oath to the surveyor-general, and duly corroborated; and a copy of the same should be furnished with the application for patent to the claim, constituting a part thereof, and included in the oath of the applicant.

(5) Applications awaiting entry, whether published or not, must be made to conform to these regulations, with respect to examination as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 590. **Same. Mill sites.** 61. Land entered as a mill site must be shown to be non-mineral. Mill sites are simply auxiliary to the working of mineral claims, and as section 2337, which provides for the patenting of mill sites, is embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

62. To avail themselves of this provision of law parties holding the possessory right to a vein or lode, and to a piece of non-mineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land-office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field-notes, may include, embrace, and describe, in addition to the vein or lode, such non-contiguous mill site, and after due proceed-

ings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

63. Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field-notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field-notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

64. In case the owner of a quartz-mill or reduction-works is not the owner or claimant of a vein or lode the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

65. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

§ 591. **Same. Citizenship.** 66. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly author-

ized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

67. In case of an individual or an association of individuals who do not appear by their duly authorized agent, you will require the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence.

68. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

69. The affidavit of the claimant as to his citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths within the land district; or, if the claimant is residing beyond the limits of the district, the affidavit may be taken before the clerk of any court of record or before any notary public of any state or territory.

70. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

§ 592. **Same. Necessity of proper proofs.** 71. No entry will be allowed until the register has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant

where a transfer has been made pending the application for patent.

72. The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer claims or mill sites.

73. In sending up the papers in a case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued. The plat forwarded as part of the proof should not be folded, but rolled, so as to prevent creasing, and either transmitted in a separate package or so inclosed with the other papers that it may pass through the mails without creasing or mutilation. If forwarded separately, the letter transmitting the papers should state the fact.

§ 593. **Possessory right.** 74. The provisions of section 2332, Revised Statutes, will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

75. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the state or territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining-ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim and, if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing

upon his possession and bona fides which he may desire to submit in support of his claim.

76. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the state or territory as aforesaid, other than that which has been finally decided in favor of the claimant.

77. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

§ 594. **Adverse claims.** 78. An adverse mining claim must be filed with the register and receiver of the land-office where the application for patent was filed, or with the register and receiver of the district in which the land is situated at the time of filing the adverse claim. It must be on the oath of the adverse claimant, or it may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated.

79. Where an agent or attorney in fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

80. The agent or attorney in fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

81. The adverse notice must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance, a duly certified copy

thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

82. In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: provided, however, that if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions, it will generally be more satisfactory if the plat thereof is made from an actual survey by a deputy mineral surveyor, and its correctness officially certified thereon by him.

83. Upon the foregoing being filed within the sixty days' publication, the register, or in his absence the receiver, will give notice in writing to both parties to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment and that, should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits.

84. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices

and plat, and the filing of the necessary proof thereof, until the controversy shall have been adjudicated in court, or the adverse claim waived or withdrawn.

85. Where an adverse claim has been filed and suit thereon commenced within the statutory period, and final judgment rendered determining the right of possession, it will not be sufficient to file with the register a certificate of the clerk of the court, setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment, together with the other evidence required by section 2326, Revised Statutes.

86. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

87. After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

88. Where an adverse claim has been filed, but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the state court having jurisdiction in the case, and also by the clerk of the circuit court of the United States for the district in which the claim is situated, will be required.

§ 595. Appointment of deputies for survey of mining claims. Charges for surveys and publications. Fees of registers and receivers, etc. 89. Section 2334 provides for the appointment of surveyors to survey mining claims, and authorizes the commissioner of the general land-office to establish the rates to be charged for surveys and for newspaper publications. Under this authority of law the following rates have been established as the maximum charges for newspaper publications in mining cases:

(1) Where a daily newspaper is designated the charge shall not exceed seven dollars for each ten lines of space occupied, and where a weekly newspaper is designated as

the medium of publication five dollars for the same space will be allowed. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates established upon the understanding that they are to be in the usual body type used for advertisements.

(2) For the publication of citations in contests or hearings involving the character of lands the charges shall not exceed eight dollars for five publications in weekly newspapers or ten dollars for publications in daily newspapers for thirty days.

90. The surveyors-general of the several districts will, in pursuance of said law, appoint in each land district as many competent surveyors for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States. The statute provides that the claimant shall also be at liberty to employ any United States mineral surveyor to make the survey. Each surveyor appointed to survey mining claims before entering upon the duties of his office or appointment shall be required to enter into a bond of not less than $1000 for the faithful performance of his duties.

As amended May 21, 1907.[8]

91. With regard to the platting of the claim and other office work in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States Treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor-general duplicate certificates of such deposit in the usual manner.

92. The surveyors-general will endeavor to appoint surveyors to survey mining claims, so that one or more may be

[8] Circular approved May 21, 1907, p. 47.

located in each mining district for the greater convenience of miners.

93. The usual oaths will be required of these surveyors and their assistants as to the correctness of each survey executed by them. The duty of the surveyor ceases when he has executed the survey and returned the field-notes and preliminary plat thereof with his report to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land-office in connection with a mining claim.

The surveyors-general and local land-officers are expected to report any infringement of this regulation to this office.

94. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

95. The fees payable to the register and receiver for filing and acting upon the applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim. (Sec. 2238, R. S., paragraph 9.)

96. At the time of payment of fee for mining application or adverse claim the receiver will issue his receipt therefor in duplicate, one to be given the applicant or adverse claimant, as the case may be, and one to be forwarded to the commissioner of the general land-office on the day of issue. The receipt for mining application should have attached the certificate of the register that the lands included in the application are subject to such appropriation, as far as shown by the records of his office.

97. The register and receiver will, at the close of each month, forward to this office an abstract of mining applications filed, an abstract of adverse claims filed, an abstract of mineral lands sold, and a report of receipts for such sales.

98. The fees and purchase-money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, char-

ging up in the disbursing account the sums to which the register and receiver may be respectively entitled as fees and commissions, with limitations in regard to the legal maximum.

§ 596. **Hearing to determine character of lands.** 99. The rules of practice in cases before the United States district land-offices, the general land-office, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the mineral character of lands.

100. Public land returned by the surveyor-general as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome by testimony taken in the manner hereinafter described.

101. Hearings to determine the character of lands are practically of two kinds as follows:

(1) Lands returned as mineral by the surveyor-general.

When such lands are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper non-mineral affidavit in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for sixty days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(2) Lands returned as agricultural and alleged to be mineral in character.

Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

102. Where a railroad company seeks to select lands not returned as mineral, but within six miles of any mining location, claim, or entry, or where in the case of a selection by a state, the lands sought to be selected are within a township in which there is a mining location, claim, or entry, publication must be made of the lands selected at the expense of the railroad company or state for a period of sixty days, with posting for the same period in the land-office for the district in which the lands are situated, during which period of publication the local land-officers will receive protests or contests for any of said tracts or subdivisions of lands claimed to be more valuable for mining than for agricultural purposes.

103. At the expiration of the period of publication the register and receiver will forward to the commissioner of the general land-office the published list, noting thereon any protests, or contests, or suggestions as to the mineral character of any such lands, together with any information they may have received as to the mineral character of any of the lands mentioned in said list, when a hearing may be ordered.

104. In lieu selections under the acts of June 4, 1897, and June 6, 1900, of land which has been returned as mineral, or which is within six miles of any mining claim, notice of the selection, commencing within twenty days thereafter, must be given, for a period of thirty days, by posting upon the land and in the local land-office, and by publication at the cost of the applicant in a newspaper designated by the register as of general circulation in the vicinity of the land and published nearest thereto. Where the selection embraces non-contiguous tracts the notice must be posted upon each tract; but such notice will not be required in any case where the selection is in lieu of "a tract covered by an unperfected bona fide claim," viz., a tract the title to which

has not passed out of the United States or for which patent certificate has not issued.

105. At the hearings under either of the aforesaid classes, the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in what subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof — whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

106. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

107. The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

108. When the case comes before this office, such decision will be made as the law and the facts may justify. In cases where a survey is necessary to set apart the mineral from

the agricultural land, the proper party, at his own expense, will be required to have the work done by a surveyor to be designated by the surveyor-general. Application therefor must be made to the register and receiver, accompanied by description of the land to be segregated and the evidence of service upon the opposite party of notice of his intention to have such segregation made. The register and receiver will forward the same to this office, when the necessary instructions for the survey will be given. The survey in such case, where the claims to be segregated are vein or lode claims, must be executed in such manner as will conform to the requirements in section 2320, United States Revised Statutes, as to length and width and parallel end lines.

109. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

110. Upon the filing of the plat and field-notes of such survey with the register and receiver, duly sworn to as aforesaid, they will transmit the same to the surveyor-general for his verification and approval; who, if he finds the work correctly performed, will furnish authenticated copies of such plat and description both to the proper local land-office and to this office, made upon the usual drawing-paper township blank.

The copy of plat furnished the local office and this office must be a diagram verified by the surveyor-general, showing the claim or claims segregated, and designating the separate fractional agricultural tracts in each 40-acre legal subdivision by the proper lot number, beginning with No. 1 in each section, and giving the area in each lot, the same as provided in paragraph 37 in the survey of mining claims on surveyed lands.

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure

a patent for such land, he must proceed as in other cases, in accordance with the foregoing regulations.

Blank forms for proofs in mineral cases are not furnished by the general land-office.

§ 597. **District of Alaska.** 112. Section 13, act of May 14, 1898, according to native-born citizens of Canada "the same mining rights and privileges" in the district of Alaska as are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, is not now and never has been operative, for the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada, are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States make no provision for such leases.

113. For the sections of the act of June 6, 1900, making further provision for a civil government for Alaska, which provide for the establishment of recording districts and the recording of mining locations; for the making of rules and regulations by the miners and for the legalization of mining records; for the extension of the mining laws to the district of Alaska, and for the exploration and mining of tide-lands and lands below low tide; and relating to the rights of Indians and persons conducting schools or missions, see page 20 of this circular.

§ 598. **Mineral lands within forest reserves.** 114. The act of June 4, 1897, provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

The act also provides that, "The Secretary of the Interior may permit, under regulations to be prescribed by him, the

use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the state or territory, respectively, where such reservations may be located."

For further instructions under this act see circular of April 4, 1900.[9]

§ 599. **Surveys of mining claims. General provisions.**

115. Under section 2334, United States Revised Statutes, the United States surveyor-general "may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims."

116. Persons desiring such appointments should therefore file their applications with the surveyor-general for the district wherein appointment is asked, who will furnish all information necessary.

117. All appointments of deputy mineral surveyors must be submitted to the commissioner of the general land-office for approval.

118. The surveyors-general have authority to suspend or revoke the commissions of deputy mineral surveyors for cause. Before final action, however, the matter should be submitted to the commissioner of the general land-office for approval.

119. Such surveyors will be allowed the right of appeal from the action of the surveyor-general in the usual manner. Such appeal should be filed with the surveyor-general, who will at once transmit the same, with a full report, to the general land-office.

120. Neither the surveyor-general nor the commissioner of the general land-office has jurisdiction to settle differences, relative to the payment of charges for field-work, between deputy mineral surveyors and claimants. These are matters

[9] 30 Land Dec. 23, 28-30.

of private contract and must be enforced in the ordinary manner, i. e., in the local courts. The department has, however, authority to investigate charges affecting the official actions of deputy mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

121. The surveyors-general should appoint as many competent deputy mineral surveyors as apply for appointment, in order that claimants may have a choice of surveyors, and be enabled to have their work done on the most advantageous terms.

122. The schedule of charges for office-work should be as low as is possible. No additional charges should be made for orders for amended surveys, unless the necessity therefor is clearly the fault of the claimant, or considerable additional office-work results therefrom.

123. In cases where the error in the original survey is due to the carelessness or neglect of the surveyor who made it, he should be required to make the necessary corrections in the field at his own expense, and the surveyor-general should advise him that the penalty for failure to comply with instructions within a specified time will be the suspension or revocation of his commission.

124. Mineral surveyors will address all official communications to the surveyor-general. They will, when a mining claim is the subject of correspondence, give the name and survey number. In replying to letters they will give the subject-matter and date of the letter. They will promptly notify the surveyor-general of any change in post-office address.

125. Mineral surveyors should keep a complete record of each survey made by them and the facts coming to their knowledge at the time, as well as copies of all their field-notes, reports, and official correspondence, in order that such evidence may be readily produced when called for at any future time. Field-notes and other reports must be written in a clear and legible hand or typewritten, in non-copying ink, and upon the proper blanks furnished gratuitously by the surveyor-general's office upon application therefor. No interlineations or erasures will be allowed.

126. No return by a mineral surveyor will be recognized as official unless it is over his signature as a United States deputy mineral surveyor, and made in pursuance of a special order from the surveyor-general's office. After he has received an order for survey he is required to make the survey and return correct field-notes thereof to the surveyor-general's office without delay.

127. The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

128. A mineral surveyor is precluded from acting, either directly or indirectly, as attorney in mineral claims. His duty in any particular case ceases when he has executed the survey and returned the field-notes and preliminary plat, with his report, to the surveyor-general. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent, or otherwise perform the duties of an attorney before the land-office in connection with a mining claim. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths to the parties in interest, but as a notary public he may administer the oaths to his assistants in making the survey; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will make no survey of a mineral claim in which he holds an interest, nor will he employ chainmen interested therein in any manner.

§ 600. **Same. Survey, how made.** 129. The survey made and returned must, in every case, be an actual survey on the ground in full detail, made by the mineral surveyor in person after the receipt of the order, and without reference to any knowledge he may have previously acquired by reason of having made the location survey or otherwise, and must show the actual facts existing at the time. This precludes him from calculating the connections to corners of the public survey and location monuments, or any other lines of his

survey through prior surveys made by others and substituting the same for connections or lines of the survey returned by him. The term survey in this paragraph applies not only to the usual field-work, but also to the examinations required for the preparation of affidavits of five hundred dollars' expenditure, descriptive reports on placer claims, and all other reports.

130. The survey of a mining claim may consist of several contiguous locations, but such survey must, in conformity with statutory requirements, distinguish the several locations, and exhibit the boundaries of each. The survey will be given but one number.

131. The survey must be made in strict conformity with, or be embraced within, the lines of the location upon which the order is based. If the survey and location are identical, that fact must be clearly and distinctly stated in the field-notes. If not identical, a bearing and distance must be given from each established corner of survey to the corresponding corner of the location, and the location corner must be fully described, so that it can be identified. The lines of the location, as found upon the ground, must be laid down upon the preliminary plat in such a manner as to contrast and show their relation to the lines of survey.

132. In view of the principle that courses and distances must give way when in conflict with fixed objects and monuments, the surveyor will not, under any circumstances, change the corners of the location for the purpose of making them conform to the description in the record. If the difference from the location be slight, it may be explained in the field-notes.

133. No mining claim located subsequent to May 10, 1872, should exceed the statutory limit in width on each side of the center of vein or 1,500 feet in length, and all surveys must close within 50—100 feet in 1,000 feet, and the error must not be such as to make the location exceed the statutory limit, and in absence of other proof the discovery point is held to be the center of the vein on the surface. The course and length of the vein should be marked upon the plat.

134. All mineral surveys must be made with a transit, provided with a solar attachment, by which the meridian can be determined independently of the magnetic needle, and all courses must be referred to the true meridian. The variation should be noted at each corner of the survey. The true course of at least one line of each survey must be ascertained by astronomical observations made at the time of the survey; the data for determining the same and details as to how these data were arrived at must be given. Or, in lieu of the foregoing the survey must be connected with some line the true course of which has been previously established beyond question, and in a similar manner, and, when such lines exist, it is desirable in all cases that they should be used as a proof of the accuracy of subsequent work.

135. Corner No. 1 of each location embraced in a survey must be connected by course and distance with nearest corner of the public survey or with a United States location monument, if the claim lies within two miles of such corner or monument. If both are within the required distance the connection must be with the corner of the public survey.

136. Surveys and connections of mineral claims may be made in suspended townships in the same manner as though the claims were upon unsurveyed land, except as hereinafter specified, by connecting them with independent mineral monuments. At the same time, the position of any public-land corner which may be found in the neighborhood of the claim should be noted, so that, in case of the release of the township from suspension, the position of the claim can be shown on the plat.

137. A mineral survey must not be returned with its connection made only with a corner of the public survey, where the survey of the township within which it is situated is under suspension, nor connected with a mineral monument alone, when situated within the limits of a township the regularity and correctness of the survey of which is unquestioned.

138. In making an official survey, corner No. 1 of each location must be established at the corner nearest the corner of the public survey or location monument, unless good

cause is shown for its being placed otherwise. If connections are given to both a corner of the public survey and location monument, corners Nos. 1 should be placed at the corner nearest the corner of the public survey. When a boundary line of claim intersects a section line courses and distances from point of intersection to the government corners at each end of the half-mile of section line so intersected must be given.

139. In case a survey is situated in a district where there are no corners of the public survey and no monuments within the prescribed limits, a mineral monument must be established, in the location of which the greatest care must be exercised to insure permanency as to site and construction.

140. The site, when practicable, should be some prominent point, visible for a long distance from every direction, and should be so chosen that the permanency of the monument will not be endangered by snow, rock, or landslides, or other natural causes.

141. The monument should consist of a stone not less than 30 inches long, 20 inches wide, and 6 inches thick, set halfway in the ground, with a conical mound of stone 4 feet high and 6 feet base alongside. The letters U. S. L. M., followed by the consecutive number of the monuments in the district, must be plainly chiseled upon the stone. If impracticable to obtain a stone of required dimensions, then a post 8 feet long, 6 inches square, set 3 feet in the ground, scribed as for a stone monument, protected by a well-built conical mound of stone of not less than 3 feet high and 6 feet base around it, may be used. The exact point for connection must be indicated on the monument by an X chiseled thereon; if a post is used, then a tack must be driven into the post to indicate the point.

142. From the monument, connections by course and distance must be taken to two or three bearing trees or rocks, and to any well-known and permanent objects in the vicinity, such as the confluence of streams, prominent rocks, buildings, shafts, or mouths of adits. Bearing trees must be properly scribed B. T. and bearing rocks chiseled B. R.,

together with the number of the location monument; the exact point on the tree or stone to which the connection is taken should be indicated by a cross or other unmistakable mark. Bearings should also be taken to prominent mountain peaks, and the approximate distance and direction ascertained from the nearest town or mining camp. A detailed description of the locating monument, with a topographical map of its location, should be furnished the office of the surveyor-general by the surveyor.

143. Corners may consist of—

First: A stone at least 24 inches long set 12 inches in the ground, with a conical mound of stone 1½ feet high, 2 feet base, alongside.

Second: A post at least 3 feet long by 4 inches square, set 18 inches in the ground and surrounded by a substantial mound of stone or earth.

Third: A rock in place.

A stone should always be used for a corner when possible, and when so used the kind should be stated.

144. All corners must be established in a permanent and workmanlike manner, and the corner and survey number must be neatly chiseled or scribed on the sides facing the claim. The exact corner point must be permanently indicated on the corner. When a rock in place is used its dimensions aboveground must be stated and a cross chiseled at the exact corner point.

145. In case the point for the corner be inaccessible or unsuitable a witness corner, which must be marked with the letters W. C. in addition to the corner and survey number, should be established. The witness corner should be located upon a line of the survey and as near as possible to the true corner, with which it must be connected by course and distance. The reason why it is impossible or impracticable to establish the true corner must always be stated in the field-notes, and in running the next course it should be stated whether the start is made from the true place for corner or from witness corner.

146. The identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, and

other objects, as prescribed in the establishment of location monuments, and when no bearings are given it should be stated that no bearings are available. Permanent objects should be selected for bearings whenever possible.

147. If an official survey has been made within a reasonable distance in the vicinity, there should be a connecting line run to some corner of the same, and in like manner all conflicting surveys and claims should be so connected, and the corner with which the connection is made described. In survey of contiguous locations which are part of a consolidated claim, where corners are common, bearings should be mentioned but once.

§ 601. **Same. Amendment to rules.** Paragraph 147 of the Mining Regulations, approved December 18, 1903, was, on August 8, 1904, amended by the Acting Secretary of the Interior to read as follows:

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return how and by what visible evidences he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

As amended Aug. 8, 1904.[19]

§ 602. **Same. Survey, how made (continued).** 148. The mineral surveyor should note carefully all topographi-

[19] 33 Land Dec. 187.

cal features of the claim, taking distances on his lines to intersections with all streams, gulches, ditches, ravines, mountain ridges, roads, trails, etc., with their widths, courses, and other data, that may be required to map them correctly. All municipal or private improvements, such as blocks, streets, and buildings, should be located.

149. If, in running the exterior lines of a claim, the survey is found to conflict with the survey of another claim, the distances to the points of intersection, and the courses and distances along the line intersected from an established corner of such conflicting claim to such points of intersection, should be described in the field-notes: provided, that where a corner of the conflicting survey falls within the claim being surveyed, such corner should be selected from which to give the bearings, otherwise the corner nearest the intersection should be taken. The same rule should govern in the survey of claims embracing two or more locations the lines of which intersect.

150. A lode and mill-site claim in one survey will be distinguished by the letters A. and B. following the number of the survey. The corners of the mill site will be numbered independently of those of the lode. Corner No. 1 of the mill site must be connected with a corner of the lode claims as well as with a corner of the public survey or United States location monument.

151. When a placer claim includes lodes, or when several contiguous placer or lode locations are included as one claim in one survey, there must be given to the corners of each location constituting the same a separate consecutive numerical designation, beginning with corner No. 1 in each case.

152. Throughout the description of the survey, after each reference to the lines or corners of a location, the name thereof must be given, and if unsurveyed, the fact stated. If reference is made to a location included in a prior official survey, the survey number must be given, followed by the name of the location. Corners should be described once only.

153. The total area of each location and also the area in conflict with each intersecting survey or claim should be

stated; also the total area claimed. But when locations embraced in one survey conflict with each other such conflicts should only be stated in connection with the location from which the conflicting area is excluded.

154. It should be stated particularly whether the claim is upon surveyed or unsurveyed public lands, giving in the former case the quarter-section, township, and range in which it is located, and the section lines should be indicated by full lines and the quarter-section lines by dotted lines.

155. The title-page of the field-notes must contain the post-office address of the claimant or his authorized agent.

156. In the mineral surveyor's certificate of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

157. The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of, and actually facilitate the extraction of mineral from, the claim.

158. All mining and other improvements claimed will be located by courses and distances from corners of the survey, or from points on the center or side lines, specifying with particularity and detail the dimensions and character of each, and the improvements upon each location should be numbered consecutively, the point of discovery being always No. 1. Improvements made upon other locations, or by a former locator who has abandoned the claim, cannot be included in the estimate, but should be described and located in the notes and plat.

159. In case of a lode and mill-site claim in the same survey the expenditure of five hundred dollars must be shown upon the lode claim.

160. If the value of the labor and improvements upon a mineral claim is less than five hundred dollars at the time of survey, the mineral surveyor may file with the surveyor-general supplemental proof showing five hundred dollars' expenditure made prior to the expiration of the period of publication.

161. The mineral surveyor will return with his field-notes a preliminary plat on blank sent to him for that purpose, protracted on a scale of two hundred feet to an inch, if practicable. In preparing plats the top is north. Copy the calculations of areas by double meridian distances and of all triangulations or traverse lines must be furnished. The lines of the claim surveyed should be heavier than the lines of conflicting claims.

162. Whenever a survey has been reported in error the surveyor who made it will be required to promptly make a thorough examination upon the premises and report the result, under oath, to the surveyor-general's office. In case he finds his survey in error he will report in detail all discrepancies with the original survey and submit any explanation he may have to offer as to the cause. If, on the contrary, he should report his survey correct, a joint survey will be ordered to settle the differences with the surveyor who reported the error. A joint survey must be made within ten days after the date of order unless satisfactory reasons are submitted, under oath, for a postponement. The field-work must in every sense of the term be a joint and not a separate survey, and the observations and measurements taken with the same instrument and chain, previously tested and agreed upon.

163. The surveyor found in error, or, if both are in error, the one who reported the same, will make out the field-notes of the joint survey, which, after being duly signed and sworn to by both parties, must be transmitted to the surveyor-general's office.

164. Inasmuch as amended surveys are ordered only by special instructions from the general land-office, and the conditions and circumstances peculiar to each separate case, and the object sought by the required amendment, alone

govern all special matters relative to the manner of making such survey and the form and subject-matter to be embraced in the field-notes thereof, but few general rules applicable to all cases can be laid down.

165. The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field-notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

166. The field-notes of the amended survey must be prepared on the same size and form of blanks as are the field-notes of the original survey, and the word "amended" must be used before the word "survey" wherever it occurs in the field-notes.

167. Mineral surveyors are required to make full examinations of all placer claims at the time of survey and file with the field-notes a descriptive report, in which will be described—

(a) The quality and composition of the soil, and the kind and amount of timber and other vegetation.

(b) The locus and size of streams, and such other matter as may appear upon the surface of the claims.

(c) The character and extent of all surface and underground workings, whether placer or lode, for mining purposes, locating and describing them.

(d) The proximity of centers of trade or residence.

(e) The proximity of well-known systems of lode deposits or of individual lodes.

(f) The use or adaptability of the claim for placer mining, and whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose.

(g) What works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

(h) The true situation of all mines, salt-licks, salt-springs, and mill sites which come to the surveyor's knowledge, or a report by him that none exist on the claim, as the facts may warrant.

(i) Said report must be made under oath and duly corroborated by one or more disinterested persons.

168. The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims, will not be allowed.

169. The field-work must be accurately and properly performed and returns made in conformity with the foregoing instructions. Errors in the survey must be corrected at the surveyor's own expense, and if the time required in the examination of the returns is increased by reason of neglect or carelessness, he will be required to make an additional deposit for office-work. He will be held to a strict accountability for the faithful discharge of his duties, and will be required to observe fully the requirements and regulations in force as to making mineral surveys. If found incompetent as a surveyor, careless in the discharge of his duties, or guilty of a violation of said regulations, his appointment will be promptly revoked.[11]

[11] The foregoing rules, from 1 to 169, inclusive, except the amendments to same, which are specifically referred to, will be found in 31 Land Dec. 474-501.

PART II. RULES AND REGULATIONS OF LAND DEPARTMENT CONCERNING COAL-LANDS.

§ 603. Coal-lands and regulations. Generally. The following coal-land laws relating to the public-land states and territories and to the district of Alaska, together with the rules and regulations as now applicable, are herewith published for the instruction of the local land-officers and the information of intending applicants. All rules and regulations heretofore issued under said laws are hereby abrogated.[12]

1. The sale of coal-lands is provided for —

(a) By ordinary cash entry under section 2347;

(b) By cash entry under a preference right to purchase acquired by compliance with the provisions of section 2348.

2. Coal-lands may be entered only after survey and by legal subdivisions. The lands must be vacant and unappropriated and must contain workable deposits of coal and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal-lands."

3. Entry by an individual may be made only by a person above the age of 21 years who is a citizen of the United States or has declared his intention to become such, and shall not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal-land law.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than $5,000 in working and improving a mine or mines of coal upon the public lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal-lands by any person or association of persons is allowed by the law. No person who, and no

[12] 35 Land Dec. 665.

association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold any other coal-lands thereunder. The right so to enter or hold is exhausted whether an entry embraces in any instance the maximum area allowed by the law or less; also by the acquisition of a preference right of entry unless sufficient cause for the abandonment thereof is shown. Assignment of a preference right of entry under section 2348, Revised Statutes, will not hereafter be recognized.

6. Information will be furnished registers and receivers by the Commissioner of the general land-office of the price at which all coal-lands in their respective districts will be offered. The local land-office will from time to time be furnished with schedules and maps (1) showing lands known to lie without ascertained coal areas and open to entry under the general land laws, according to the character of each particular tract; (2) showing lands known to contain workable deposits of coal, whereon prices will be fixed upon information derived from field examination; and (3) showing lands containing coal of such character as may, from their location at a distance from transportation lines, be sold at the minimum price fixed by the statute as hereinafter stated.

Local land-officers will allow coal entries for lands in the first and third classes at the minimum price fixed by the statute, and for those in the second class at the prices stated in the schedules and maps furnished them. Lands listed in classes 2 and 3 are subject to entry under the coal-land laws only, unless shown by the applicant to be of such character as to be subject to entry under some other law. For those lands listed as of the first and third classes (when entered under the coal-land laws) the price is not less than $10 per acre when situated more than 15 miles from a completed railroad and $20 when situated within 15 miles of a completed railroad; and where the lands lie partly without such limit, the higher price must be paid for each smallest legal subdivision the greater part of which lies within 15 miles of such railroad. The term "completed railroad" is

construed to mean a railroad actually constructed, equipped, and operating at the date of entry. The distance is to be calculated from the point on such railroad nearest the lands applied for, and the facts in each case must be shown by the affidavit of the applicant, corroborated by the affidavit of some disinterested credible person having actual knowledge thereof.

7. A preference right of entry accrues only where a person or association of persons, severally qualified, have opened and improved a coal mine or mines upon the public lands and shall be in actual possession thereof and not by the filing of a declaratory statement. A perfunctory compliance with the law in this respect will not suffice, but a mine or mines of coal must be in fact opened and improved on the land claimed.[12a]

There is no authority under which a coal-mine upon public lands, entry not having be [been] made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to a preference right under section 2348 of the Revised Statutes. To preserve a preference right of entry specified in the statute the person or association of persons having acquired the same must present to the register of the proper land district, within sixty days from the date of actual possession and commencement of improvements upon the land, a declaratory statement therefor in all cases where the township plat has been filed. When the township plat is not on file at the date of such improvement such declaratory statement must be presented within sixty days from the receipt of such plat at the district land-office.

8. After entry has been allowed the local officers have no authority to order a hearing or make further determination with respect to it, except upon instructions from the general land-office. They will, however, receive all protests against it and promptly forward them, together with a statement of the facts shown by their records, for consideration and action.

[12a] For construction of the last two subdivisions of § 603, see 36 Land Dec. 126 (October 21, 1907).

9. Prior to entry it is competent for the local officers to order a hearing on sufficient grounds set forth under oath by any protestant.

10. When it is sought to purchase otherwise than in the exercise of a preference right the party will himself make oath to the following application, which must be presented to the register:

I, —— ——, hereby apply, under the provisions of the Revised Statutes of the United States relating to the sale of coal-lands of the United States, to purchase the —— quarter of section ——, in township —— of range ——, in the district of lands subject to sale at the land-office at ——, and containing —— acres; and I solemnly swear that no portion of said tract is in the possession of any other party or parties who has or have commenced improvements thereon for the development of coal; that I am twenty-one years of age; a citizen of the United States (or have declared my intention to become a citizen of the United States), and have never held, except —— or purchased any lands under said act, either as an individual or as a member of an association; that I make this application in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not to my knowledge within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

11. Where a preference right of entry is sought to be preserved the required declaratory statement must be substantially as follows:

I, —— ——, do hereby declare my intention to purchase, in the exercise of a preference right, under the provisions of the Revised Statutes of the United States relating

to the sale of the coal-lands of the United States, the —— quarter of section —— of township —— of range ——, in the district of the lands subject to sale at the district land-office at ——; and I do solemnly swear that I am —— years of age and a citizen of the United States (or have declared my intention to become a citizen of the United States); that I have never, either as an individual or as a member of an association, held, except ——, or purchased any coal-lands under the aforesaid provisions of the Revised Statutes; that I was in possession of, and commenced improvements on, said tract on the —— day of ——, A. D. 19—, and have ever since remained in actual possession continuously; that I have opened and improved a valuable mine of coal thereon, and have expended in labor and improvements on said mine the sum of —— dollars, the labor and improvements being as follows: (Here describe the nature and character of the improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described land and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

12. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment; but the local officers will allow no party to make final proof and payment except on special written notice to all others who appear on their records as claimants to the same tract. No notice will be given to parties whose declaratory statements have expired by limitation under the law.

13. A declarant will not be permitted to file after the expiration of the sixty days allowed nor to exercise a preference right of purchase after the expiration of the year.

14. When it is sought to purchase, in the exercise of a preference right, the applicant must himself make the following affidavit, which must be presented to the register:

I, —— ——, claiming, under the provisions of the Revised Statutes of the United States relating to the sale of the coal-lands of the United States, the preference right to purchase the —— quarter of section ——, in township —— of range ——, subject to sale at the district land-office at ——, hereby apply to purchase and enter the same; and I do solemnly swear that I have not hitherto held, except ——, or purchased, either as an individual or as a member of an association, any coal-lands under the aforesaid provisions of the law; that I have expended in developing coal-mines on said tract, in labor and improvements, the sum of —— dollars, the nature of such improvement being as follows: —— ——; that I am now in the actual possession of said mines, and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, or copper. So help me God.

15. Where purchase and entry, whether in the exercise of a preference right or otherwise, is made by an association, each member thereof must subscribe and swear to the application or affidavit, the necessary changes being made to cover the joint possession and expenditure and the purchase and entry in their joint interest.

16. Each application, declaratory statement, and affidavit, forms whereof are given above, must be verified before the register or receiver in the land district wherein the lands

involved are situate. Under this regulation no verification can be made outside of such land district.

17. Upon the filing of an application to purchase coal-lands under the provisions of paragraphs 10 or 14 the applicant will be required, at his own expense, to publish a notice of said application in a newspaper nearest the lands, to be designated by the register, for a period of thirty days, during which time a similar notice must be posted in the local land-office and in a conspicuous place on the land. The notice should describe the land applied for and state that the purpose thereof is to allow all persons claiming the land applied for, or desiring to show that the applicant's coal entry should not be allowed for any reason, an opportunity to file objections with the local land-officers.

Publication must be made sufficiently in advance to permit entry within the year specified by the statute.

18. After the thirty days period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement (including an attached copy of the published notice) that the notice was published for the required period, giving the first and last date of such publication, and his own affidavit, or that of some credible person having personal knowledge of the fact, showing that the notice aforesaid remained conspicuously posted upon the land sought to be patented during said thirty days publication, giving the dates. The register shall certify to the fact that the notice was posted in his office for the full period of thirty days, the certificate to state distinctly when such posting was done and how long continued, giving the dates. In no case shall entry be allowed until the proofs specified have been filed.

The claimant will be required, within thirty days after the expiration of the period of newspaper publication, to furnish the proofs specified in said paragraph and tender the purchase price of the land. Should the specified proofs and purchase price be not furnished and tendered within this time, the local land-officers will thereupon reject the application, subject to appeal. Furthermore, in the exercise of a preference right to purchase, no part of the thirty-day

period specified herein may extend beyond the year fixed by the statute.[12b]

19. Of the following forms, the one appropriate to the sections of the Revised Statutes under which application is made should be used for publication of all notices of application to enter coal-lands:

NOTICE FOR PUBLICATION.

Coal Entry.

(Sec. 2347, Rev. Stats.)

—— —— Land-Office,

—— ——, 19—.

Notice is hereby given that —— ——, of ——, county of ——, state (or territory) of ——, has this day filed in this office his application to purchase, under the provisions of section 2347, United States Revised Statutes, the —— of section No. ——, township No. ——, range No. ——.

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the sale thereof to applicant, should file their affidavits of protest in this office on or before the —— day of ——, 19—, otherwise the application may be allowed.

—— ——, Register.

NOTICE FOR PUBLICATION.

Coal Entry.

(Secs. 2348-2352, Rev. Stats.)

—— —— Land-Office,

—— ——, 19—.

Notice is hereby given that —— ——, of ——, county of ——, state (or territory) of ——, who, on the —— day of ——, 19—, filed in this office his coal declaratory statement for the —— of section No. ——, township No. ——, range No. ——, has this day filed in this office his application to purchase said land under the provisions of sections 2348 to 2352, United States Revised Statutes.

[12b] Helena etc. Co. v. Dailey, 36 Land Dec. 192.

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the entry thereof by applicant, should file their affidavits of protest in this office on or before the —— day of ——, 19—.

—— ——, Register.

20. When it is sought to purchase, either by ordinary cash entry or in the exercise of a preference right, the register, if he finds the tract applied for is vacant, surveyed, and unappropriated, and that the claimant has complied with all the laws and regulations relating to the acquisition of coal-lands, will so certify to the receiver, stating the prescribed purchase price, and the applicant must then pay the same.

21. The receiver will then issue to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the general land-office, whence, if the proceedings are found to be regular, a patent will be issued; and on surrender of the duplicate receipt such patent will be delivered, at the option of the patentee, either by the commissioner at Washington or by the register at the district land-office.

22. An application for cash entry will be subject to any valid adverse right which may have attached to the same land pursuant to section 2348, Revised Statutes.

23. Qualified persons or associations who are lawfully in possession of tracts of coal-lands which are still unsurveyed may, under sections 2401, 2402, and 2403, Revised Statutes, as amended by the act of August 20, 1894, apply to the surveyor-general for the survey of the township or townships, or portions thereof, embracing the lands claimed, to be specified as nearly as practicable. Each such application must be accompanied by the affidavit of the applicant or applicants, duly corroborated by at least two competent persons, setting forth the qualifications of the former as claimant or claimants of the land, the facts constituting their possession, the character of the land, and such other facts in the case as are essential in that connection. If the surveyor-general approves the application he will thereupon

transmit it to the general land-office with the affidavits and his report.

24. The "Rules of Practice in Cases before the United States District Land-Offices, the General Land-Office, and the Department of the Interior" will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal-lands.

25. Local officers will report at the close of each month as "sales of coal-lands" all filings and entries in separate abstracts, commencing with No. 1 and thereafter proceeding consecutively in the order of their reception. Where a series of numbers has already been commenced by sale of coal-lands they will continue the same without change.[13]

§ 604. **Same. Coal-lands in Alaska.** 1. Persons or associations of persons locating or entering coal-lands in the district of Alaska under the provisions of the act of April 28, 1904 (33 Stat., 525), amendatory of the act of June 6, 1900 (31 Stat., 658), are required to possess the qualifications of persons or associations making entry under the general coal-land laws of the United States, and are subject to the same limitations.

2. That lands must be vacant and unappropriated, and must contain deposits of coal, and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal-lands."

3. Entry by an individual may be made only by a person above the age of 21 years, who is a citizen of the United States, and shall not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal-land law.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than $5000 in working and improving a mine or mines of coal upon the public

[13] 35 Land Dec. 667-673.

lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal-lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold other coal-lands thereunder. The right so to enter or hold is exhausted, whether an entry embraces in any instance the maximum area allowed by the law or less.

6. There is no authority under which a coal-mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to the right to apply for patent.

7. The requirement of the statute with respect to the form of the tract sought to be entered is construed to mean that the boundary lines of each entry must be run in cardinal directions, i. e., due north and south and east and west lines, by reference to a true meridian (not magnetic), with the exception of meander lines or meanderable streams and navigable waters forming a part of the boundary lines of a location. Those meander lines which form part of the boundary of a claim will be run according to the directions in the Manual of Surveying Instructions, but other boundary lines will be run in true east and west and north and south directions, thus forming rectangles, except at intersections with meander lines.

8. The permanent monuments to be placed at each of the four corners of the tract located may consist of—

First. A stone at least 24 inches long, set 12 inches in the ground, with a conical mound of stone 1½ feet high, 2 feet base, alongside.

Second. A post at least 3 feet long by 4 inches square, set 18 inches in the ground, and surrounded by a substantial mound of stone or earth.

Third. A rock in place; and, whenever possible, the identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, or other

objects, permanent objects being selected for bearings whenever possible.

9. It is further provided by the first section of the act that within one year from the date of the passage of the act or within one year from making the location there shall be filed for record in the recording district and with the register and receiver of the land district in which the land is situated a notice containing the name or names of the locator or locators, the date of the location, the description of the lands located, and a reference to such natural objects or permanent monuments as will readily identify the same. In other words, the notice should contain a complete description in every particular of the claim as it is marked and monumented upon the ground.

10. By the second section of the act the locator or his assigns is allowed three years from the date of filing the notice prescribed in the first section of the act within which to file an application with the local land-officers for a patent for the land claimed. It will thus be seen that persons or associations of persons claiming coal-lands in that district at the date of the passage of the act have four years from location or from the date of the act within which to present their applications for patent.

11. Persons or associations of persons who fail to record their notices within the time prescribed by the first section of the act, or fail to file application for patent in the time prescribed by the second section, forfeit their rights to the particular tract located.

12. With the application for patent the claimant must file a certified copy of the plat of survey and field-notes thereof made by a United States deputy surveyor or a United States mineral surveyor, duly approved by the surveyor-general for the district of Alaska. Under this clause of the act it will be allowable for the claimant, at his own expense, to procure the making of a survey by one of the officials mentioned without first making application to the surveyor-general, but the survey when made is to be submitted to and approved by the surveyor-general and by him numbered serially.

13. The survey must be made in strict conformity with or be embraced within the lines of the location as appears from the record thereof with the recorder in the recording district, and must be made in accordance with the regulations relative to lode and placer mining claims so far as they are applicable.

14. Upon the presentation of an application for patent, if no reason appears for rejecting it, it will be received by the register and receiver and the claimant required to publish a notice thereof for the period of sixty days in a newspaper in the district of Alaska published nearest the location of the particular lands, and to cause a copy thereof, together with a certified copy of the official plat of survey, to be posted and remain posted throughout the period of publication in a conspicuous place upon the land applied for, and the register will post a copy of such notice and official plat in his office for the same period. When the notice is published in a weekly newspaper nine consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

15. The notice so published must embrace all the data given in the notice posted upon the claim and in the local land-office. In addition to such data, the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field-notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, if there is one, and fix the boundaries of the claim by courses and distances.

The publication in the newspaper and the posting upon the land and in the local land-office must cover the same period of time.

16. Upon the expiration of the sixty-day period prescribed the claimant may file in the local land-office a sworn statement from the office of publication, to which shall be attached a copy of the notice published, to the effect that the notice was published for the statutory period, giving the first and last day of such publication, and his own

affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during the sixty-day period of publication, giving the dates. The register will also file with the record a certificate showing that the notice and plat were posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

Not earlier than six months after the expiration of the period of publication, if no objections are interposed or adverse claim filed, entry may be allowed upon payment of the price per acre specified by the act, which is $10 per acre in all cases.

17. The proviso to the second section of the act is as follows: That nothing herein contained shall be so construed as to authorize entries to be made or title to be acquired to the shore of any navigable waters within said district.

The term "shore" is defined to mean the land lying between high and low water marks of any navigable waters within said district.

18. Section 3 provides for the assertion by any person or association of persons of an adverse claim, and requires that such adverse claim shall be filed during the period of posting and publication or within six months thereafter; that it shall be under oath, and set forth the nature and extent thereof.

19. An adverse claim may be verified by the oath of the adverse claimant or by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated, and when verified by such agent or attorney in fact he must distinctly swear that he is such agent or attorney in fact and accompany his affidavit by proof thereof. The adverse claimant should set forth fully the nature and extent of the interference or conflict by filing with his adverse claim a plat showing his entire claim and its situation or position with relation to the one against which he claims; whether he claims as a purchaser for valuable consideration or as a locator; if the former, a certified copy of the original location, the original conveyance or duly

certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or, if the transaction was a merely verbal one, he will narrate the circumstances attending the purchase, the date thereof, and amount paid, which facts will be supported by the affidavits of one or more witnesses, if any were present at the time; and if he claims as locator, he must file a duly certified copy of the location-notice from the office of the proper recorder and his affidavit of continued ownership.

20. Upon the filing of such adverse claim within the sixty days period of posting and publication, or within six months thereafter, the party who files the adverse claim shall, under the act, within sixty days after the filing of such adverse claim, begin an action to quiet title in a court of competent jurisdiction within the district of Alaska.

21. All papers filed should have indorsed upon them the precise date of filing; and upon the filing of an adverse claim within the time prescribed by the statute all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notice and plat and filing the necessary proof thereof, until final adjudication of the rights of the parties. In cases of final judgment rendered the party entitled under the decree must, before he is allowed to make entry, file a certified copy thereof.

22. Where such suit has been dismissed a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient. Where no suit has been commenced against the application for patent within the statutory period, a certificate to that effect by the clerk of the territorial court having jurisdiction will be required.

23. In connection with the foregoing, it is to be borne in mind that by section 4 of the act it is declared:

That all the provisions of the coal-land laws of the United States not in conflict with the provisions of this act shall continue and be in full force in the district of Alaska.

24. An assignment to a qualified person of a preference right of entry under the act of April 28, 1904, will be recognized when properly executed. Proof and payment by the

assignee must be made, however, in the same manner and within the same time as though there had been no assignment.

25. The following forms for notice of location and application for patent should be used:

NOTICE OF LOCATION.

I, —— ——, of ——, having on the —— day of ——, 19—, opened and improved a coal-mine on the following-described tract (here describe the lands by metes and bounds in rectangular form with north and south boundary lines run according to the true meridian, and a reference to such natural or permanent objects as will readily identify the same), do hereby locate the same as provided by the Alaska coal-land act of April 28, 1904 (33 Stats., 525); and I do solemnly swear that I am a citizen of the United States (or have declared my intention to become a citizen of the United States); that I am over the age of 21 years; that I have never either as an individual or as a member of an association held, except ——, or purchased any coal-lands of the United States; that I have remained in actual possession of said land continuously since the —— day of ——, 19—; that I have expended in labor and improvements on said mine the sum of —— dollars, the labor and improvements being as follows (here describe the nature and character of such improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described lands and with each and every portion thereof; that my knowledge of said lands is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, copper, or other valuable minerals, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, or copper or other minerals. So help me God. —— ——

Dated ——, 19—.

(Jurat.)

APPLICATION FOR PATENT.

I, —— ——, claiming under the provisions of the act of April 28, 1904 (33 Stats., 525), amendatory of the act of June 6, 1900 (31 Stats., 659), extending the coal-land laws to the district of Alaska, do hereby apply to purchase the lands described in the accompanying field-notes and plat and subject to sale at the district land-office at ——, Alaska; and do solemnly swear that my title to said tract is as follows: —— as will more fully appear by the certified copy of location-notice and abstract of title filed herewith; that I am above the age of 21 years, and a citizen of the United States; that I have not hitherto held, except ——, or purchased, either as an individual or as a member of an association, any coal-lands under the provisions of the coal-land laws; that I have expended in developing coal-mines on said tract, in labor and improvements, the sum of —— dollars, the nature of said improvements being as follows: ——; that I am now in actual possession of said mines and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every portion thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto: that said land contains deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, copper, or other valuable minerals, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, copper, or other minerals. So help me God. —— ——

(Jurat.)

26. The notice of location and the application for patent, the forms of which are given above, may be sworn to by the claimant before any officer authorized by law to administer oaths, but the authority of said officer must be properly shown.

27. Any party duly qualified under the law, after swearing to his notice of location or application for patent, may, by a sufficient power of attorney duly executed under the laws of the state or territory in which such party may be then residing, empower an agent to file with the register of the proper land-office the notice of location or application for patent, and also authorize him to make payment for and entry of the lands in the name of such qualified party; and when such power of attorney shall have been filed in the local land-office such agent may act thereunder as indicated, but no person will be permitted to act as such agent for more than four applicants.

28. Where a claimant shows by affidavit that he is not personally acquainted with the character of the land, any qualified person may make the required affidavit as to its character; but whether this affidavit is made by the claimant or by another it must be corroborated by the affidavits of two disinterested and credible witnesses having personal knowledge of the facts.

29. The "Rules of Practice in Cases before the United States District Land-Offices, the General Land-Office, and the Department of the Interior," will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal-lands.

30. Local officers will report at the close of each month as "sales of coal-lands" all filings and entries in separate abstracts, commencing with number one and thereafter proceeding consecutively in the order of their reception.

Where a series of numbers has already been commenced by sale of coal-lands, they will continue the same without change.

[Signed] R. A. Ballinger, Commissioner. Approved April 12, 1907: James Rudolph Garfield, Secretary.[14]

§ 605. Same. Instructions to register and receiver, Juneau, Alaska. 1. Under the order of November 12, 1906, withdrawing lands in Alaska from entry, location, or filing under the coal-land laws, and subsequent modifications of

[14] 35 Land Dec. 673-680.

said order, no lands in Alaska known to contain workable deposits of coal can be entered, located, or filed upon while such orders remain in force, except as hereinafter provided.

2. All qualified persons or associations of qualified persons who had within one year prior to November 12, 1906, in good faith made legal and valid locations under the act of April 28, 1904, may file notices of such locations in the manner and within the time prescribed by said act, if such notices have not already been filed and such locations have not been abandoned or forfeited; and they or any other person or persons to whom they may lawfully assign their rights after such notices have been filed may thereafter proceed to make entry and obtain patent within the time and in the manner prescribed by law.

3. In computing the time within which notices of location may be filed under the preceding paragraph, the time intervening between November 12, 1906, and August 1, 1907, will not be taken into consideration or counted, but such notices may be filed within one year from the date of location exclusive of such time.

4. All qualified persons or associations of qualified persons who may have in good faith legally filed valid notices of location under the act of April 28, 1904, prior to November 12, 1906, and the bona fide qualified assignees of such persons, may make entry and obtain patent under such notices within the time and in the manner prescribed by statute if they have not abandoned their right to do so.

5. In computing the time within which persons or associations of persons mentioned in the preceding paragraph may apply for patent, the time intervening between November 12, 1906, and the day on which they receive the written notices given by you as hereinafter required will not be considered or counted, and such applications may be made at any time within three years from the date on which such notices of location were filed exclusive of such time.

6. You are directed to at once notify all persons or associations of persons who have filed notices of location in your office, including those who have pending applications for patent, and all persons or associations of persons holding

as assignees under such locations who have notified you of such assignments, of their right to proceed in the manner herein prescribed and authorized, and to furnish them with a copy of these instructions. These notices must be served either personally or by registered mail, and you should carefully preserve with the record in each case the registry return receipt or other evidence of such notice.

7. In all cases where you publish notice of applications for entry or patent under the coal-land laws, or under any other law, you will at once mail a copy of said notice to a special agent assigned to duty in Alaska. Should said agent thereafter file in your office a protest against the validity of the location or claim embraced in any such application you will defer action upon such application until said protest is withdrawn or appropriate action is taken thereon.

[Signed] R. A. Ballinger, Commissioner. Approved May 16, 1907: James Rudolph Garfield, Secretary.[14a]

§ 606. Same. Supplemental regulations. Instructions to registers and receivers. Coal-lands. 1. Lands heretofore withdrawn from coal entry and not released from such withdrawals shall be entered on the tract-books as "coal-lands."

2. No entries of lands so noted shall be permitted under the coal-land laws until the maps and lists, as hereinafter mentioned, are filed in the local land-office. Provided, however, such lands are now open for location and entry under the general mining laws for valuable deposits of gold, silver, or copper, notwithstanding the fact that they may also contain workable deposits of coal. Lands noted on the tract-books as coal-lands may, if non-mineral in character, be entered under the appropriate land laws, but no final proof or entry will be allowed until receipt of a report from a field-officer, in accordance with instructions from the commissioner of the general land-office, unless said lands have been restored to entry as hereinafter provided.

3. You will be furnished, from time to time, township maps showing the coal-lands in the respective townships,

[14a] 35 Land Dec. 572.

containing thereon the price at which such coal-lands will be sold. Lands not enumerated and priced as "coal-lands" in any such township map shall be treated as restored to entry under the general land laws, and you will so note on your tract-books. Upon the filing of such maps, coal claims may be received, as provided by the regulations of April 12, 1907,[15] within the townships covered thereby.

All coal filings made within sixty days prior to withdrawals from coal entry may be completed within the time prescribed by the statutes, less the time from date of such withdrawals to date of special written notice of filing of the maps and lists in the local office, as herein provided, such notice to be given by you to all persons entitled thereto. Also persons who had, within sixty days prior to such withdrawal, opened and improved a coal-mine upon public surveyed lands may file within the statutory period allowed, less that covered by the withdrawal. Claims upon unsurveyed lands classed as coal-lands must be presented for filing within sixty days after the filing of the plat of survey, if the maps and plats are filed before the survey, or, after the lands have been surveyed, within sixty days after the filing of the maps and lists herein required in the local office, if the maps and lists are filed after the survey. However, in cases of valid and existent rights, the price per acre to be paid will be the minimum price fixed by statute.

§ 607. **Same. Lands not "coal-lands."** 4. Lands not listed as "coal-lands," as hereinbefore mentioned, may be entered under any of the public land laws applicable to the particular tract. If any of these lands are found to contain workable deposits of coal they may be entered under the provisions of the coal-land circular of April 12, 1907, at the minimum price fixed by the statute.

§ 608. **Same. Action required by special agents.** 5. In all cases of application to make final proof, final entry, or to purchase public lands under any public land law, the

[15] 35 Land Dec. 665.

register and receiver will at once forward a copy thereof to the chiefs of field division of special agents. Such copy will be indorsed "Coal-lands" or "Not coal-lands," as the case may be. Where the land is in a national forest or other reservation, a second copy will be forwarded to the officer in charge thereof.

6. Registers and receivers will not issue final certificate or its equivalent in any case until the copy of notice mentioned in paragraph 5 is returned with the chief of field division's indorsement thereon. The chief of field division will in every case return the copy of notice prior to date for final proof or purchase.

7. When the copy of notice is returned with an indorsement not protesting the validity of the entry, the register and receiver will act upon the merits of the proof as submitted. Where the returned indorsement of chief of field division or other officer protests the validity of the entry, the register and receiver will forward all papers to this office without action.

8. The chief of field division, on receipt of such copy of notice, will make a case thereof on his docket, and also make a field examination in the following cases:

(a) Cases wherein he has reason to believe a particular entry is fraudulent.

(b) Cases wherein the register and receiver have reason to believe a particular entry is fraudulent and have indorsed that fact upon the copy of the notice.

(c) Cases other than coal entries in lands classed as coal-lands. Chiefs of field division will exert every effort to make the field examination prior to date for final proof.

9. In cases not within paragraph 8 the chief of field division will return such copy of notice indorsed over his signature "No protest against validity of this entry." In cases under paragraph 8 he will return to the register and receiver the copy of notice indorsed "Protest against the validity of this entry is filed in this office." If investigation is completed before date for final proof, he will so notify the register and receiver, by letter; and if investigation is unfavorable to entry, he will submit his report to this office.

The circulars of January 21, 1907, March 15, 1907, and all parts of the circular of December 7, 1905, in conflict herewith, and all other regulations and circulars in conflict herewith are hereby revoked.

[Signed] R. A. Ballinger, Commissioner. Approved April 24, 1907: James Rudolph Garfield, Secretary.[16]

§ 609. **Same. Supplemental regulations. [Additional.]** 1. As soon as the maps showing the character of any part of any township or townships within your respective districts have been furnished you as prescribed in the coal-land regulations, approved April 12, 1907 [35 Land Dec. 665], you will at once post in your office a list of such townships, and furnish a copy of such list to the newspapers in your district for publication as a matter of news, but without cost to the government for such publication.

2. You are also directed to mail a copy of these instructions and a copy of the instructions of April 24, 1907 [35 Land Dec. 681], to all persons or associations of persons shown by your record to have or claim any interest in any land covered by any pending application to purchase under the coal-land laws or embraced in any valid unexpired coal declaratory statement.

All qualified persons or associations of qualified persons who legally and in good faith went into possession of and improved coal-mines within less than sixty days preceding the date when the lands upon which such mines are situated were withdrawn from coal entry, and who have not filed declaratory statements, may at once, or within the time prescribed by statute, namely, within sixty days after the date of actual possession, and the commencement of improvements on the land, not counting the time intervening between date of withdrawal and July 1, 1907, file such declaratory statements and proceed to obtain patent in the manner, at the minimum price, and within the time fixed by law, regardless of the fact that the maps required by the coal-land regulations of April 12, 1907, may not have been filed in your

[16] 35 Land Dec. 681-683.

office, and regardless of the fact that a higher price may have been fixed for such lands under said regulations.

4. All qualified persons or associations of qualified persons who in good faith filed legal declaratory statements in your office prior to the date on which the lands covered thereby were withdrawn from coal entry, and all qualified persons legally holding as assignees under any such declaratory statement by assignment made prior to April 12, 1907, may proceed to obtain title in the manner, at the minimum price, and within the time fixed by the statute, namely, fourteen months after the date of actual possession and the commencement of improvements on the land, not counting the period intervening between date of withdrawal and the mailing of copies of regulations as prescribed by paragraph 2 hereof, regardless of the fact that the maps required by the coal-land regulations of April 12, 1907, may not have been filed in your office at the date upon which application to purchase is presented, and regardless of the fact that a higher price may have been fixed for the lands claimed under said regulations.

All parts of regulations in conflict herewith are hereby revoked.

Dated May 20, 1907.

[Signed] R. A. Ballinger, Commissioner.[17]

§ 610. **Same. Coal-lands. Mineral.** Coal-lands are mineral within the meaning of the law relating to public lands.[18] And as such, subject to entry when found within the United States forest reservations.[19]

§ 611. **Same. Application to purchase coal-land.** It is not essential to the validity of an application by an association of four persons that the applicant shall have opened and improved a mine or mines of coal on each of the tracts embraced in the application. It is sufficient in such cases,

[17] 35 Land Dec. 683, 684.
[18] Brown v. Northern Pac. R. Co., 31 Land Dec. 29.
[19] In re Crowder, 30 Land Dec. 92.

where there are no conflicting claimants, that the applicants show that they are safely qualified to purchase, that the lands applied for are of the character subject to sell under the coal-land laws, and that as an association of persons, the applicants have expended not less than five thousand dollars in working and improving a mine or mines of coal on the land.[20]

§ 612. Same. Coal-land. Affidavit. The affidavit prescribed by paragraph 32 of the coal-land regulations must be made by the claimant himself.[21]

PART III. RECOGNITION OF AGENTS AND ATTORNEYS BEFORE DISTRICT LAND-OFFICES.

§ 613. Regulations. 1. An attorney at law who desires to represent claimants or contestants before a district land-office must file a certificate, under the seal of a United States, state, or territorial court for the judicial district in which he resides or the local land-office is situated, that he is an attorney in good standing.

2. Any person (not an attorney at law) who desires to appear as an agent for claimants or contestants before a district land-office must file a certificate from a judge of a United States court, or of a state or territorial court having common-law jurisdiction, except probate courts, in the county wherein he resides or the local office is situated, duly authenticated under the seal of the court, that such person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render clients valuable service, and otherwise competent to advise and assist them in the presentation of their claims or contests.

3. The oath of allegiance required by section 3478 of the United States Revised Statutes must also be filed by applicants. In case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required.

[20] Lehmer v. Carroll, 34 Land Dec. 267.
[21] In re Keen, 34 Land Dec. 49.

4. An applicant to practise under the above regulations must address a letter to the register and receiver, inclosing the certificate and oath above required, in which letter his full name and post-office address must be given. He must state whether or not he has ever been recognized as an attorney or agent before this department or any bureau thereof, or any of the local land-offices, and, if so, whether he has ever been suspended or disbarred from practice. He must also state whether he holds any office under the government of the United States.

5. After an application to practise has been filed in due form, the register and receiver will enroll the name and post-office address of the applicant upon a record kept by them for that purpose, and sign and deliver to him a certificate of such enrollment, and thereafter recognize the applicant as an attorney or agent, as the case may be, unless they have good reason to believe that the person making the application is unfit to practise before their offices, in which case they will at once forward the application to the commissioner of the general land-office, with a report giving full specification of their reasons for so doing, and furnish a copy of such report to the applicant, and notify him that he will be allowed to file a reply thereto with said commissioner within thirty days from such notice.

6. When you have recognized and enrolled the name of any person as an attorney or agent, you will at once advise the commissioner of the general land-office of that fact, and give the name and post-office address of such person.

7. An attorney or agent who has been admitted to practise in any particular land district, or in the Department of the Interior, may be enrolled and authorized to practise in any other district upon filing with the register and receiver of such district a certificate of the register and receiver before whom he was admitted to practise, or a certificate of the commissioner of the general land-office, that he is an attorney or agent in good standing.

8. Every attorney must, either at the time of entering his appearance for a claimant or contestant, or within thirty days thereafter, file written authority for such appearance,

signed by said claimant or contestant, and setting forth his or her present residence, occupation, and post-office address. Upon a failure to file such written authority within the time limited, it is the duty of the register and receiver to no longer recognize him as attorney in the case.

9. When the appearance is for a person other than a claimant or contestant of record, the attorney or agent will be required to state the name of the person for whom he appears, his post-office address, the character and extent of his interest in the matter involved, and when and from what source it was acquired. Authorizations and powers signed or executed in blank will not be recognized.

10. If any attorney or agent shall knowingly commit any of the following acts, viz.: Represent fictitious or fraudulent entrymen; prosecute collusive contests; speculate in relinquishments of entries; assist in procuring illegal or fraudulent entries or filings; represent himself as the agent or attorney of entrymen when he is only an attorney or agent for a transferee or mortgagee; conceal the name or interest of his client; give pernicious advice to parties seeking to obtain title to public land; attempt to prevent a qualified person from settling upon, entering, or filing for a tract of public land properly subject to such entry or filing, or be otherwise guilty of dishonest or unprofessional conduct, or who, in connection with business pending in local land-offices or in this department, shall knowingly employ as sub-agent, clerk, or correspondent a person who has been guilty of any one of these acts, or who has been prohibited from practising before the register and receiver of this department, it will be sufficient reason for his disbarment from practice.

11. When any register and receiver shall, either through their own personal knowledge or through any charge sworn to by some other person, have information that an attorney or agent admitted to practise before their office has been guilty of any act or misconduct which would warrant his disbarment, such register and receiver shall at once make investigation, and if they have or find reasonable grounds for believing the attorney or agent guilty of such acts of

misconduct, they will at once formulate specific charges against him and forward the same to the commissioner of the general land-office for his consideration and such action thereunder as he may direct.

12. If the commissioner of the general land-office finds that any charges preferred by any register and receiver are sufficient to support a disbarment proceeding, he will at once forward the charges submitted to him to the register and receiver with his approval and such directions as he may deem necessary, and thereafter the register and receiver will at once furnish a copy of the charges to the accused attorney or agent, and notify him that unless he, within thirty days from such notice, files in their office a denial of such charges under oath, the charges will be taken as confessed and forwarded with the register's and receiver's report thereon to the commissioner of the general land-office for further appropriate action.

13. In all cases where denials are filed as required by rule 12 hereof, the register and receiver will at once fix a day for a hearing under such charges and thereafter proceed in the manner prescribed by the Rules of Practice regulating other hearings before their office.

14. In all cases where an accused attorney or agent fails to file a denial as required by rule 12 hereof, and in all cases where the register and receiver have rendered a decision, either favorable or unfavorable to the accused attorney or agent, after a hearing, they will at once make report and recommendation thereon to the commissioner of the general land-office, and furnish the accused attorney or agent with a copy of such report or decision, and notify him that he will be allowed thirty days from the date of such notice within which to file his objections thereto with the commissioner.

15. After the expiration of the thirty days mentioned in rule 14, or sooner if the accused attorney or agent so request it, the commissioner of the general land-office will consider the record and recommendation forwarded by the register and receiver, and if in his judgment disbarment is not warranted, he will dismiss the charges and notify the

register and receiver and the accused attorney or agent thereof; but if he finds that disbarment is warranted, he will render his decision so holding and notify the accused attorney or agent thereof and of his right of appeal therefrom within the time and in the manner prescribed by the Rules of Practice for other appeals to the Secretary of the Interior.

16. If any accused attorney or agent shall fail to appeal from the decision of the commissioner of the general land-office as prescribed in rule 15, or if the decision of the commissioner is affirmed on such appeal, such attorney or agent will thereafter stand disbarred and be precluded from representing claimants or contestants before the local land-offices, and the accused attorney or agent and the register and receiver will be so notified.

17. Prior to their actual disbarment attorneys and agents will be recognized as such, unless for special reasons the Secretary of the Interior shall order their suspension from practice during the pendency of the proceedings against them, but registers and receiver will in no case attempt to suspend them.

[Signed] R. A. Ballinger, Commissioner. Approved April 20, 1907: James Rudolph Garfield, Secretary.[22]

[22] 35 Land Dec. 534, 537.

CHAPTER VI.

SURVEYS. CIRCULAR TO APPLICANTS.

§ 614. Requirements in conduct of business.
§ 615. Fees and charges for office-work and stationery in connection with survey of mining claims.

§ 614. Requirements in conduct of business. You will observe the following requirements in the conduct of your business with the surveyor-general's office, the same being based upon the United States mining laws and circular and special instructions from the commissioner of the general land-office:

1. All applications for survey orders, descriptive reports on placer claims, or certificates of five hundred dollars' expenditure, should be addressed to the surveyor-general and be signed by the claimants, their agent or attorney.

2. Each application should contain:

(a) The name of the claimant in full, and as it is desired to appear in the application for patent.

(b) The name of each location embraced in the claim.

(c) The name of the land and mining districts in which the claim is located.

(d) The name of the United States deputy mineral surveyor to whom it is desired the order shall be issued.

3. You are required to file with each application for survey order, a copy of the record of location of the claim, properly certified by the recorder of the county or mining district where the claim is situate.

4. The deputy mineral surveyor is required to survey the claim in strict conformity with or within the lines of the location upon which the order of survey is based.

You are, therefore, advised before filing your application to see that your location has been made in compliance with the law and regulations, and that it properly describes the claim for which the patent is sought.

The act of Congress of May 10, 1872, expressly provides

that "the location must be distinctly marked on the ground so that its boundaries can be readily traced," and "that all records of mining claims hereafter made shall contain the name or names of the locators, the date of location, and such description of the claim or claims, located by reference to some natural object or permanent monument, as will identify the claim."

"These provisions of the law must be strictly complied with in each case to entitle a claimant to a survey and patent, and therefore should a claimant under a location made subsequent to the passage of the mining act of May 10, 1872, who has not complied with said requirements in regard to marking the location upon the ground, and recording the same, apply for a survey, you will decline to make it."

"The only relief for a party under such circumstances, will be to make a new location in conformity to law and regulations, as no case will be approved by this office, unless these and all other provisions of law are substantially complied with." [1]

5. Paragraph 99 (now 91) general land-office circular, of December 10, 1891, edition December 1, 1894, relating to the expense of office-work connected with the survey of mineral claims, reads as follows:[2]

6. The various surveyors-general have adopted schedules of rates for office-work, and an estimate of the cost in any particular case may be had upon application.

Should an applicant deem an estimate excessive, he will be allowed the right of appeal to the general land-office in the usual manner.

In transmitting such an appeal the surveyor-general should transmit therewith a full report.

7. Should the office-work in any case amount to more than the estimate, or if an amended order is issued, an additional deposit will be required.

8. In districts where there are no United States depositories, you should deposit with the nearest assistant United

[1] See General Land-Office Circular dated November 20, 1873.
[2] See rule 91, ante, § 595.

States treasurer, or depository, and in all cases immediately forward the original certificate to the Secretary of the Treasury and the duplicate to the surveyor-general's office, retaining the triplicate for your own use and security. Under no circumstances will the deposit be made by the surveyor-general.[3]

9. An application for an amended survey order must be accompanied with a statement setting forth fully the reasons for the proposed amendment and all the material facts in the matter.

10. If, after having obtained a survey order, you should abandon your purpose of having a survey made, you can apply the deposit, less the amount estimated for office expenses already incurred, on a new survey if one is desired.

11. Upon discovery of any error or defect in an order you are requested to return it to the surveyor-general's office for correction or amendment.

12. If, after having obtained an order for survey, you should find that the record of location does not practically describe the location as staked upon the ground, you should file a certified copy of an amended location-certificate, correctly describing the claim, and obtain an amended order for survey. If a relocation of the claim is made embracing ground not included in the original order, or other material change is made, you will abandon the original number of the order for survey, and a new order will be issued in which a number in the current series will be substituted.

13. The order of approval of surveys of mineral claims is prescribed by general land-office circular dated March 3, 1881, as follows:

"The mining survey first applied for shall have the priority of action in all its stages in the office of the surveyor-general, including the delivery thereof, over any other survey of the same ground or any portion thereof.

"The surveyor-general should not order or authorize a survey of a claim which conflicts with one previously applied for until the survey first applied for has been completed, examined, approved and platted, and the plats delivered.

[3] See paragraph 5, ante, this section.

"When the conflict does not appear until the field-notes of the respective surveys are returned, then the survey first applied for should be first examined, approved, and platted, and the plats delivered before the field-notes of the survey last applied for are taken up for examination or plats constructed.

"When the survey first authorized is not returned within a reasonable period, and the applicant for a conflicting survey makes affidavit that he believes (stating the reasons for his belief) that such first applicant has abandoned his purpose of having a survey made, or is deferring it for vexatious purposes, to wit, to postpone the subsequent applicant, the surveyor-general shall give notice of such charges to such first applicant, and call upon him for an explanation under oath of the delay. He shall also require the deputy mineral surveyor to make a full statement in writing, explanatory of the delay; and if the surveyor-general shall conclude that good and sufficient reasons for such delay do not exist, he shall authorize the applicant for the conflicting survey to proceed with the same; otherwise the order of proceedings shall not be changed.

"Whenever an applicant for a survey shall have reason to suppose that a conflicting claimant will also apply for a survey for patent, he may give a notice in writing to the surveyor-general particularly describing such conflicting claim, and file a copy of the notice of location of such conflicting claim. In such case the surveyor-general will not order or authorize any survey of such conflicting claim until the survey first applied for has been examined, completed, approved and platted, and the plats delivered."

14. You have the option of employing any United States deputy mineral surveyor in the district to execute the order of survey, and must make satisfactory arrangements with such surveyor for the payment of his services and those of his assistants in making the survey, as the United States will not be held responsible for the payment of the same. The duty of the deputy surveyor in any particular case ceases when he has executed the survey and returned the same to this office. He is not allowed to prepare for the mining

claimant the papers in support of an application for patent, being precluded from acting either directly or indirectly as attorney in mineral claims.[4]

15. You are advised of your right to appeal to the commissioner of the general land-office from the approval or disapproval of the survey of your claim. The appeal must be in writing or in print, should set forth in brief and clear terms the specific points of exception to the ruling appealed from and should be transmitted through the surveyor-general's office.

§ 615. Fees and charges for office-work and stationery in connection with survey of mining claims. Notwithstanding the fact that the United States surveyor-general appointed for the different states is a Federal office-holder, the schedule of charges for work in his office seems to vary in the different states.

The following schedule, however, furnished through the courtesy of the United States surveyor-general at San Francisco, under date of March 19, 1906, gives the exact charges for the state of California, and will be, to a certain extent, a guide for applicants for surveys in the different mining states.

1 lode claim	$35.00
1 placer claim	40.00
Lode claims (consolidated), each	25.00
Placer claims (consolidated), each	30.00
Lode claim and mill site	45.00
Placer claim, including lode	55.00
1 mill site	35.00
Supplemental report on lode claim	5.00
Segregation survey (mineral from agricultural)	15.00
Cancelation of instructions for survey and reissue of same	5.00

[4] U. S. Rev. Stats., § 2334; 5 Fed. Stats. Ann., p. 49.

CHAPTER VII.

FEES OF REGISTERS AND RECEIVERS AND SURVEYORS-GENERAL.[1]

§ 616. Declaratory statements.
§ 617. Mineral applications and adverse claims.
§ 618. Timber and stone land applications.
§ 619. Reducing testimony to writing.
§ 620. Transcripts from records.
§ 621. Record information.
§ 622. Plats and diagrams (registers and receivers of all districts are also authorized to furnish plats, diagrams, etc.).
§ 623. Fees of surveyors-general. Certified copies of plats and records.

§ 616. Declaratory statements.[2]

Coal-land declaratory statement..... $3.00
Reservoir declaratory statements (act January 13, 1897) 3.00

§ 617. Mineral applications and adverse claims.

For filing and acting upon each application for a patent $10.00
For filing and acting upon each adverse claim 10.00

§ 618. Timber and stone land applications.

For filing and acting upon each application to purchase timber or stone lands, to be paid only when the entry is allowed $10.00

§ 619. Reducing testimony to writing. Fees for reducing testimony to writing are allowed at the rate of 22½ cents for each 100 words in the following cases:

In establishing claims to mineral lands.

In establishing claims to timber and stone lands.

[1] Fees of registers and receivers in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and in other states as noted in the chapter.

[2] 33 Land Dec. 631.

In hearings before registers and receivers in contested cases.

No fees are allowed for reducing testimony to writing in any case where the writing is not done by the register or receiver, or by the employees in their office. In computing the fees for reducing testimony to writing, only the words actually written must be charged for at the rate allowed by paragraphs 10, 11, and 12 of section 2238, Revised Statutes, and no charge is to be made for the printed words. The words written must be actually counted and charged for, and there can be no uniform fee of a specified sum applicable to every case of the same class of entries; that is, registers and receivers cannot fix the fee at $1.00 or any other sum for each pre-emption, final homestead, mineral, or other entry.

§ 620. **Transcripts from records.** Registers and receivers are entitled to charge at the rate of 10 cents per hundred words for making transcripts of their records for individuals.[3]

§ 621. **Record information.** Registers and receivers for any consolidated land district are entitled to charge and receive for any record information respecting public lands or land titles in their consolidated land district such fees as are properly authorized by the tariff existing in the local courts of such district.[4]

(Consolidated districts are those districts into which one or more previously existing districts have been merged.[5])

§ 622. **Plats and diagrams (registers and receivers of all districts are also authorized to furnish plats, diagrams, etc.)** Under the second section of the act of March 3, 1883, authorizing a charge to be made for plats, diagrams, etc., the fees for the same are hereby fixed as follows:[6]

[3] Act of Congress March 22, 1904; 10 Fed. Stats. Ann., p. 74.
[4] U. S. Rev. Stats., § 2239, 6 Fed. Stats. Ann., p 231.
[5] 33 Land Dec. 633.
[6] Approved Aug. 28, 1906; 35 Land Dec. 139.

For a diagram showing entered land only..... $1.00
For a township plat showing form of entries, names of claimants, and character of entries..... 2.00
For a township plat showing form of entries, names of claimants, character of entry, and number..... 3.00
For a township plat showing form of entries, names of claimants, character of entry, number and date of filing or entry, together with topography, etc... 4.00

The plat or diagram must be standard size (Form 4—590b) and it must be a correct and complete delineation of the particular township. There is no legal authority under said statute for registers and receivers to furnish a plat of a section or subdivision, or any other fraction of a township, and to charge or receive therefor a proportionate part of the authorized fee.

For lists of lands sold, furnished state or territorial authorities for the purpose of taxation, compensation for the same at the rate of 10 cents per entry.[7]

No fees, commissions, or rewards are required or allowed to be paid at United States land-offices for extra services of any character whatever; and registers and receivers are absolutely prohibited by law from charging or receiving, directly or indirectly, any fee or compensation not expressly authorized by law, or for any service not imposed upon them by law, or a greater fee or compensation in any case than specifically allowed by law.[8]

In other states, including North and South Dakota, the fees are the same as the above, with the following exceptions:

Coal-land declaratory statement..... $2.00
Reservoir declaratory statement 2.00

And for reducing testimony to writing 15 cents instead of 22½ cents for each 100 words.[9]

[7] 33 Land Dec. 630.
[8] 33 Land Dec. 630. Approved May 20, 1905: E. A. Hitchcock, Secretary.
[9] 33 Land Dec. 627, 629.

§ 623. **Fees of surveyors-general. Certified copies of plats and records.** United States Surveyors-General: Sirs — The circular of this office dated April 15, 1907 (35 Land Dec. 514), revoking official circular dated October 13, 1886 (5 Land Dec. 190), relative to the furnishing to applicants exemplified copies of your plats or any other records in your office, is hereby amended to read as follows:

Hereafter when application is made for exemplified copies of your plats or any other records in your office, you will first furnish the applicant with a memorandum of the exact cost thereof at the rates established by law for registers and receivers for like services, and require him to pay or remit the amount to you in your official capacity as surveyor-general, and upon receipt of the amount, you will then cause the copies to be prepared during office hours and furnish them to the applicant. All such moneys must be promptly receipted for. . . .

[Signed] R. A. Ballinger, Commissioner. Approved October 19, 1907: James Rudolph Garfield, Secretary.[10]

Same. Late rule governing. United States Surveyors-General: Sirs — It appears that the rates established by law for the services of registers and receivers in furnishing exemplified copies of plats and other records of their offices are entirely inadequate to meet the expense of like services when rendered by surveyors-general, and it is therefore ordered that hereafter you will collect for such services the exact cost thereof, as nearly as may be, taking into account the value of the material, the time consumed, and the compensation of the employees doing the work.

Inasmuch as the charges to be made for like services by the surveyor-general of Louisiana are fixed by law (4 Stats. 494), the foregoing instructions do not apply to this office.

[Signed] R. A. Ballinger, Commissioner. Approved February 21, 1908: Frank Pierce, First Assistant Secretary.[11]

[10] 36 Land Dec. 125.

[11] 36 Land Dec. 282.

CHAPTER VIII.

RULES OF PRACTICE BEFORE DISTRICT LAND-OFFICES, GENERAL LAND-OFFICE, AND DEPARTMENT OF THE INTERIOR.[1]

§ 624. Proceedings before registers and receivers. 1. Initiation of contests.
§ 625. Same. 2. Hearings in contested cases.
§ 626. Same. 3. Notice of contest.
§ 627. Same. How transferees and encumbrancers may entitle themselves to notice of contest or other proceedings.
§ 628. Same. 4. Service of notice.
§ 629. Same. 5. Notice by publication.
§ 630. Same. 6. Proof of service of notice.
§ 631. Same. 7. Notice of proceedings.
§ 632. Same. 8. Rehearings.
§ 633. Same. 9. Continuances.
§ 634. Same. 10. Depositions on interrogatories.
§ 635. Same. 11. Oral testimony before officers other than registers and receivers.
§ 636. Same. 12. Trials.
§ 637. Same. 13. Appeals.
§ 638. Same. 14. Reports and opinions.
§ 639. Same. 15. Taxation of costs.
§ 640. Same. 16. Appeals from decisions rejecting applications to enter public lands.
§ 641. Proceedings before surveyors-general.
§ 642. Proceedings before commissioner of general land-office and Secretary of the Interior. 1. Examination and argument.
§ 643. Same. 2. Rehearing and review.
§ 644. Same. 3. Appeal from the commissioner to the Secretary of the Interior.
§ 645. Same. 4. Attorneys.
§ 646. Same. 5. Decisions.
§ 647. Writ of certiorari. Petition should contain copy of decision complained of.
§ 648. Practice. Appeal. Certiorari.
§ 649. Regulations governing the recognition of agents and attorneys before district land-officers.

[1] Revised Rules of Practice before the United States District Land-Offices, the General Land-Office, and the Department of the Interior.

§ 650. Laws and regulations governing the recognition of agents, attorneys, and other persons to represent claimants before the Department of the Interior and the bureaus thereof. 1. Laws.
§ 651. Same. 2. Regulations.
§ 652. Compulsory attendance of witnesses. Under act of January 31, 1903. Circular of the Department of the Interior, March 20, 1903.
§ 653. Same. Amendments to circular.

§ 624. **Proceedings before registers and receivers. 1. Initiation of contests.** Rule 1. Contests may be initiated by an adverse party or other person against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, for any sufficient cause affecting the legality or validity of the claim.

Rule 2. In every case of application for a hearing an affidavit must be filed by the contestant with the register and receiver, fully setting forth the facts which constitute the grounds of contest. When the contest is against the heirs of a deceased entryman, the affidavit shall state the names of all the heirs. If the heirs are non-resident or unknown, the affidavit shall set forth the fact and be corroborated with respect thereto by the affidavit of one or more persons.

Rule 3. Where an entry has been allowed and remains of record the affidavit of the contestant must be accompanied by the affidavits of one or more witnesses in support of the allegations made.

§ 625. **Same. 2. Hearings in contested cases.** Rule 4. Registers and receivers may order hearings in all cases wherein entry has not been perfected and no certificate has been issued as a basis for patent.

Rule 5. In case of an entry or location on which final certificate has been issued the hearing will be ordered only by direction of the commissioner of the general land-office.

Rule 6. Applications for hearings under rule 5 must be transmitted by the register and receiver, with special report and recommendation, to the commissioner for his determination and instructions.

§ 626. **Same. 3. Notice of contest.** Rule 7. At least thirty days' notice shall be given of all hearings before the register and receiver unless by written consent an earlier day shall be agreed upon.

Rule 8. The notice of contest and hearing must conform to the following requirements:

1. It must be written or printed.
2. It must be signed by the register and receiver, or by one of them.
3. It must state the time and place of hearing.
4. It must describe the land involved.
5. It must state the register and receiver's number of the entry and the land-office where and the date when made, and the name of the party making the same.
6. It must give the name of the contestant and briefly state the grounds and purpose of the contest.
7. It may contain any other information pertinent to the contest.

§ 627. **Same. How transferees and encumbrancers may entitle themselves to notice of contest or other proceedings.** Rule 8½. Transferees and encumbrancers of land, the title to which is claimed or is in process of acquisition under any public land law, shall, upon filing notice of the transfer or encumbrance in the district land-office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original claimant. Every such notice of a transfer or encumbrance must be forthwith noted upon the records of the district land-office and be promptly reported to the general land-office, where like notation thereof will be made.

§ 628. **Same. 4. Service of notice.** Rule 9. Personal service shall be made in all cases when possible if the party to be served is resident in the state or territory in which the land is situated, and shall consist in the delivery of a copy of the notice to each person to be served. When the contest is against the heirs of a deceased entryman, the notice

shall be served on each heir. If the heirs of the entryman are non-resident or unknown, notice may be served upon them by publication as hereinafter provided. If the person to be personally served is an infant under fourteen years of age or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the statutory guardian or committee of such infant or person of unsound mind, if there be one; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

Rule 10. Personal service may be executed by any officer or person.

Rule 11. Notice may be given by publication only when it is shown by affidavit presented on behalf of the contestant and by such other evidence as the register and receiver may require that due diligence has been used and that personal service cannot be made. The affidavit must also state the present post-office address of the person intended to be served, if it is known to the affiant, and must show what effort has been made to obtain personal service.

Rule 12. When it is found that the prescribed service cannot be had, either personal or by publication, in time for the hearing provided for in the notice, the notice may be returned prior to the time fixed for the hearing, and a new notice issued fixing another time of hearing, for the proper service thereof, an affidavit being filed by the contestant showing due diligence and inability to serve the notice in time.

§ 629. **Same. 5. Notice by publication.** Rule 13. Notice by publication shall be made by advertising the notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be published in such county, then in the newspaper published in the county nearest to such land. The first insertion shall be at least thirty days prior to the day fixed for the hearing.

Rule 14. Where notice is given by publication a copy thereof shall, at least thirty days before the date for the

hearing, be mailed, by registered letter, to each person to be so notified at the last address, if any, given by him as shown by the record, and to him at his present address named in the affidavit for publication required by rule 11, if such present address is stated in such affidavit and is different from his record address. If there be no such record address and if no present address is named in the affidavit for publication, then a copy of the notice shall be so mailed to him at the post-office nearest to the land. A copy of the notice shall also be posted in the register's office for a period of at least thirty days before the date for the hearing and still another copy thereof shall be posted in a conspicuous place upon the land for at least two weeks prior to the date set for the hearing. When notice of proceedings commenced by the government against timber and stone entries is given by publication the posting of notices upon the land will not be required.

§ 630. **Same. 6. Proof of service of notice.** Rule 15. Proof of personal service shall be the written acknowledgment of the person served or the affidavit of the person who served the notice attached thereto, stating the time, place, and manner of service.

Rule 16. When service is by publication, the proof of service shall be a copy of the advertisement, with the affidavit of the publisher or foreman attached thereto, showing that the same was successively inserted the requisite number of times, and the date thereof.

§ 631. **Same. 7. Notice of proceedings.** Rule 17. Notice of motions, proceedings, orders, and decisions shall be in writing, and may be served personally or by registered letter mailed to the last address, if any, given by or on behalf of the party to be notified, as shown by the record, and if there be no such record address, then to the post-office nearest to the land; and in all those contest cases where notice of contest is given by registered mail under rule 14, and the

return of the registry receipt shows such notice to have been received by the contestee, the address at which the notice was so received shall be considered as an address given by the contestee, within the meaning of this rule.[2]

Rule 18. Proof of service by mail shall be the affidavit of the person who mailed the notice, attached to the post-office receipt for the registered letter.

§ 632. **Same. 8. Rehearings.** Rule 19. Orders for rehearing must be brought to the notice of the parties in the same manner as in case of original proceedings.

§ 633. **Same. 9. Continuances.** Rule 20. A postponement of a hearing to a day to be fixed by the register and receiver may be allowed on the day of trial on account of the absence of material witnesses, when the party asking for the continuance makes an affidavit before the register and receiver showing—

1. That one or more of the witnesses in his behalf is absent without his procurement or consent;
2. The name and residence of each witness;
3. The facts to which they would testify if present;
4. The materiality of the evidence;
5. The exercise of proper diligence to procure the attendance of the absent witnesses; and
6. That affiant believes said witnesses can be had at the time to which it is sought to have the trial postponed.

Where hearings are ordered by the commissioner of the general land-office in cases to which the United States is a party, continuances will be granted in accordance with the usual practice in United States cases in the courts, without requiring an affidavit on the part of the government.

Rule 21. One continuance only shall be allowed to either party on account of absent witnesses, unless the party applying for a further continuance shall at the same time apply for an order to take the depositions of the alleged absent witnesses.

[2] See ante, rule 8½, this chapter.

Rule 22. No continuance shall be granted when the opposite party shall admit that the witnesses would, if present, testify to the statement set out in the application for continuance.

§ 634. **Same. 10. Depositions on interrogatories.** Rule 23. Testimony may be taken by deposition in the following cases:

1. Where the witness is unable, from age, infirmity, or sickness, or shall refuse, to attend the hearing at the local land-office.

2. Where the witness resides more than fifty miles from the place of trial, computing distance by the usually traveled route.

3. Where the witness resides out of or is about to leave the state or territory, or is absent therefrom.

4. Where from any cause it is apprehended that the witness may be unable or will refuse to attend, in which case the deposition will be used only in event that the personal attendance of the witness cannot be obtained.

Rule 24. The party desiring to take a deposition under rule 23 must comply with the following regulations:

1. He must make affidavit before the register or receiver, setting forth one or more of the above-named causes for taking such deposition, and that the witness is material.

2. He must file with the register and receiver the interrogatories to be propounded to the witness.

3. He must state the name and residence of the witness.

4. He must serve a copy of the interrogatories on the opposing party or his attorney.

Rule 25. The opposing party will be allowed ten days in which to file cross-interrogatories.

Rule 26. After the expiration of the ten days allowed for filing cross-interrogatories, a commission to take the deposition shall be issued by the register and receiver, which commission shall be accompanied by a copy of all the interrogatories filed.

Rule 27. The register and receiver may designate any officer, authorized to administer oaths within the county or district where the witness resides, to take such deposition.

Rule 28. It is the duty of the officer before whom the deposition is taken to cause the interrogatories appended to the commission to be written out and the answers thereto to be inserted immediately underneath the respective questions, and the whole, when completed, is to be read over to the witness, and must be by him subscribed and sworn to in the usual manner before the witness is discharged.

Rule 29. The officer must attach his certificate to the deposition, stating that the same was subscribed and sworn to by the deponent at the time and place therein mentioned.

Rule 30. The deposition and certificate, together with the commission and interrogatories, must then be sealed up, the title of the cause indorsed on the envelope, and the whole returned by mail or express to the register and receiver.

Rule 31. Upon receipt of the package at the local land-office, the date when the same is opened must be indorsed on the envelope and body of the deposition by the local land-officers.

Rule 32. If the officer designated to take the deposition has no official seal, a proper certificate of his official character, under seal, must accompany his return.

Rule 33. The parties in any case may stipulate in writing to take depositions before any qualified officer, and in any manner.

Rule 34. All stipulations by parties or counsel must be in writing, and be filed with the register and receiver.

§ 635. Same. 11. Oral testimony before officers other than registers and receivers. Rule 35. In the discretion of registers and receivers testimony may be taken near the land in controversy before a United States commissioner, or other officer authorized to administer oaths, at a time and place to be fixed by them and stated in the notice of hearing.

2. Officers taking testimony under the foregoing rule will be governed by the rules applicable to trials before registers and receivers.[3]

[3] See post, rules 36-42, inclusive, this chapter.

3. Testimony so taken must be certified to, sealed up, and transmitted by mail or express to the register and receiver, and the receipt thereof at the local office noted on the papers, in the same manner as provided in case of depositions by rules 29 to 32, inclusive.

4. On the day set for hearing at the local office the register and receiver will examine the testimony taken by the officer designated, and render a decision thereon in the same manner as if the testimony had been taken before themselves.[4]

5. No charge for examining testimony in such cases will be made by the register and receiver.

6. Officers designated to take testimony under this rule will be allowed to charge such fees as are properly authorized by the tariff of fees existing in the local courts of their respective districts, to be taxed in the same or equivalent manner as costs are taxed by registers and receivers under rules 54 to 58, inclusive.

7. When an officer designated to take testimony under this rule, or when an officer designated to take depositions under rule 27, cannot act on the day fixed for taking the testimony or deposition, the testimony or deposition, as the case may be, will be deemed properly taken before any other qualified officer, at the same place and time, who may be authorized by the officer originally designated, or by agreement of parties, to act in the place of the officer first named.

§ 636. Same. 12. Trials. Rule 36. Upon the trial of a cause, the register and receiver may in any case, and should in all cases when necessary, personally direct the examination of the witnesses, in order to draw from them all the facts within their knowledge requisite to a correct conclusion by the officers upon any point connected with the case.

Rule 37. The register and receiver will be careful to reach, if possible, the exact condition and status of the land involved by any contest, and will ascertain all the

[4] See post, rules 50-53, inclusive, this chapter.

facts having any bearing upon the rights of parties in interest.

Rule 38. In pre-emption cases they will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim, and the exact status of the land at that date as shown upon the records of their office.

Rule 39. In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

Rule 40. Due opportunity will be allowed opposing claimants to confront and cross-examine the witnesses introduced by either party.

Rule 41. No testimony will be excluded from the record by the register and receiver on the ground of any objection thereto; but when objection is made to testimony offered, the exceptions will be noted, and the testimony, with the exceptions, will come up with the case for the consideration of the commissioner. Officers taking testimony will, however, summarily put a stop to obviously irrelevant questioning.

Rule 42. Upon the day originally set for hearing, and upon any day to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing. When testimony is taken in shorthand, the stenographer's notes must be written out and the written testimony then and there subscribed by the witness and attested by the officer before whom the same is taken, unless the parties shall by proper stipulation in writing, filed with the record, mutually agree to the contrary, in which event the transcribed stenographic notes shall in all cases be accompanied by a certificate of the officer or officers before whom the testimony was taken showing that the witnesses were each duly sworn before testifying, and also by the affidavit of the stenographer who took the testimony in shorthand that the purported transcription thereof is a true

and correct statement of the testimony actually given by the witnesses after being duly sworn at the hearing.

§ 637. Same. 13. Appeals. Rule 43. Appeals from the final action or decisions of registers and receivers lie in every case to the commissioner of the general land-office.[5]

In cases dismissed for want of prosecution the register and receiver will by registered letter notify the parties in interest of the action taken, and that unless within thirty days a motion for reinstatement shall be made, the default of the plaintiff will be final, and that no appeal will be allowed; which notice shall be given as provided in circular of October 28, 1886.[6]

If such motion for reinstatement be made within the time limited, the local officers shall take action thereon, and grant or deny it, as they deem proper. If granted, no appeal shall lie. If overruled, the plaintiff shall have the right of appeal, the time for which shall be thirty days, and run from the date of written notice to the plaintiff.

Rule 44. After hearing in a contest case has been had and closed, the register and receiver will, in writing, notify the parties in interest of the conclusions to which they have arrived, and that thirty days are allowed for appeal from their decision to the commissioner, the notice to be served personally or by registered letter, as provided in rule 17.[7]

Rule 45. The appeal must be in writing or in print, and should set forth in brief and clear terms the specific points of exception to the ruling appealed from.

Rule 46. Notice of appeal and copy of specification of errors shall be served on appellee within the time allowed for appeal, and appellee shall be allowed ten days for reply before transmittal of the record to the general land-office.

Rule 47. No appeal from the action or decisions of the register and receiver will be received at the general land-office unless forwarded through the local officers.

Rule 48. In case of a failure to appeal from the decision

[5] U. S. Rev. Stats., §§ 453, 2478; 6 Fed. Stats. Ann., pp. 212, 259.
[6] 5 Land Dec. 204.
[7] See ante, rule 8½, this chapter.

of the local officers, their decision will be considered final as to the facts in the case and will be disturbed by the commissioner only as follows:

1. Where fraud or gross irregularity is suggested on the face of the papers.

2. Where the decision is contrary to existing laws or regulations.

3. In event of disagreeing decisions by the local officers.

4. Where it is not shown that the party against whom the decision was rendered was duly notified of the decision and of his right of appeal.

Rule 49. In any of the foregoing cases the commissioner will reverse or modify the decision of the local officers or remand the case, at his discretion.

Rule 50. All documents once received by the local officers must be kept on file with the cases, and the date of filing must be noted thereon; and no papers will be allowed under any circumstances to be removed from the files or taken from the custody of the register and receiver, but access to the same, under proper rules, so as not to interfere with necessary public business, will be permitted to the parties in interest, or their attorneys, under the supervision of those officers.

§ 638. Same. **14. Reports and opinions.** Rule 51. Upon the termination of a contest, the register and receiver will render a joint report and opinion in the case, making full and specific reference to the postings and annotations upon their records.

Rule 52. The register and receiver will promptly forward their report, together with the testimony and all the papers in the case, to the commissioner of the general land-office, with a brief letter of transmittal, describing the case by its title, the nature of the contest, and the tract involved.

Rule 53. The local officers will thereafter take no further action affecting the disposal of the land in contest until instructed by the commissioner.

In all cases, however, where a contest has been brought against any entry or filing on the public lands, and trial has

taken place, the entryman may, if he so desires, in accordance with the provisions of the law under which he claims and the rules of the department, submit final proof and complete the same, with the exception of the payment of the purchase-money or commissions, as the case may be; said final proof will be retained in the local land-office, and should the entry finally be adjudged valid, said final proof, if satisfactory, will be accepted upon the payment of the purchase money or commissions, and final certificate will issue, without any further action on the part of the entryman, except the furnishing of a non-alienation affidavit by the entryman, or, in case of his death, by his legal representatives. In such cases the party making the proof, at the time of submitting the same, will be required to pay the fees for reducing the testimony to writing.

§ 639. **Same. 15. Taxation of costs.** Rule 54. Parties contesting pre-emption, homestead, or timber-culture entries and claiming preference rights of entry under the second section of the act of May 14, 1880,[8] must pay the costs of contest.

Rule 55. In other contested cases each party must pay the costs of taking testimony upon his own direct and cross-examination.

Rule 56. The accumulation of excessive costs under rule 54 will not be permitted; but when the officer taking testimony shall rule that a course of examination is irrelevant and checks the same, under rule 41, he may, nevertheless, in his discretion, allow the same to proceed at the sole cost of the party making such examination. This rule will apply also to cross-examination in contests covered by the provisions of rule 55.

Rule 57. Where parties contesting pre-emption, homestead, or timber-culture entries establish their right of entry under the pre-emption or homestead laws of the land in contest by virtue of actual settlement and improvement, without reference to the act of May 14, 1880, the cost of contest will be adjudged under rule 55.

[8] 21 Stats. at L., p. 140; 6 Fed. Stats. Ann., p. 300.

Rule 58. Registers and receivers will apportion the cost of contest in accordance with the foregoing rules and may require the party liable thereto to give security in advance of trial, by deposit or otherwise, in a reasonable sum or sums, for payment of the costs of transcribing the testimony.

Rule 59. The cost of contest chargeable by registers and receivers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers directly or indirectly.

Rule 60. Contestants must give their own notices and pay the expenses thereof.

Rule 61. Upon the termination of a trial, any excess in the sum deposited as security for the costs of transcribing the testimony will be returned to the proper party.

Rule 62. When hearings are ordered by the commissioner or by the Secretary of the Interior, upon the discovery of reasons for suspension in the usual course of examination of entries, the preliminary costs will be provided from the contingent fund for the expenses of local land-offices.

Rule 63. The preliminary costs provided for by the preceding section will be collected by the register and receiver when the parties are brought before them in obedience to the order of hearing.

Rule 64. The register and receiver will then require proper provision to be made for such further notification as may become necessary in the usual progress of the case to final decision.

Rule 65. The register and receiver will append to their report in each case a statement of costs and the amount actually paid by each of the contestants, and also a statement of the amount deposited to secure the payment of the costs, how said sum was apportioned, and the amount returned, if any, and to whom.

§ 640. Same. 16. Appeals from decisions rejecting applications to enter public lands. Rule 66. For the purpose of enabling appeals to be taken from the rulings or action of the local officers relative to applications to file upon, enter,

or locate the public lands the following rules will be observed:

1. The register and receiver will indorse upon every rejected application the date when presented and their reasons for rejecting it.

2. They will promptly advise the party in interest of their action and of his right of appeal to the commissioner.

3. They will note upon their records a memorandum of the transaction.

Rule 67. The party aggrieved will be allowed thirty days from receipt of notice in which to file his appeal in the local land-office. Where the notice is sent by mail, five days additional will be allowed for the transmission of notice and five for the return of the appeal.

Rule 68. The register and receiver will promptly forward the appeal to the general land-office, together with a full report upon the case.

Rule 69. This report should recite all the facts and the proceedings had, and must embrace the following particulars:

1. A statement of the application and rejection, with the reasons for the rejection.

2. A description of the tract involved and a statement of its status, as shown by the records of the local land-office.

3. References to all entries, filings, annotations, memoranda, and correspondence shown by the record relating to said tract and to the proceedings had.

Rule 70. Rules 43 to 48, inclusive, and rule 93 are applicable to all appeals from decisions of registers and receivers.

§ 641. **Proceedings before surveyors-general.** Rule 71. The proceedings in hearings and contests before surveyors-general shall, as to notices, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before registers and receivers, unless otherwise provided by law.

§ 642. **Proceedings before the commissioner of the general land-office and Secretary of the Interior. 1. Examination and argument.** Rule 72. When a contest has been closed before the local land-officers and their report forwarded to the general land-office, no additional evidence will be admitted in the case, unless offered under stipulation of the parties to the record, except where such evidence is presented as the basis of a motion for a new trial or in support of a mineral application or protest; but this rule will not prevent the commissioner, in the exercise of his discretion, from ordering further investigation when necessary.

Rule 73. After the commissioner shall have received a record of testimony in a contested case, thirty days will be allowed to expire before any action thereon is taken, unless, in the judgment of the commissioner, public policy or private necessity shall demand summary action, in which case he will proceed at his discretion, first notifying the attorneys of record of his proposed action.

Rule 74. When a case is pending on appeal from the decision of the register and receiver or surveyor-general, and argument is not filed before the same is reached in its order for examination, the argument will be considered closed, and thereafter no further arguments or motions of any kind will be entertained except upon written stipulation duly filed or good cause shown to the commissioner.

Rule 75. If before decision by the commissioner either party should desire to discuss a case orally, reasonable opportunity therefor will be given in the discretion of the commissioner, but only at a time to be fixed by him upon notice to the opposing counsel, stating time and specific points upon which discussion is desired; and except as herein provided, no oral hearings or suggestions will be allowed.

§ 643. **Same. 2. Rehearing and review.** Rule 76. Motions for rehearing before registers and receivers, or for review or reconsideration of the decisions of the commissioner or Secretary, will be allowed, in accordance with legal

principles applicable to motions for new trials at law, after due notice to the opposing party.

Rule 77. Motions for rehearing and review, except as provided in rule 114, must be filed in the office wherein the decision to be affected by such rehearing or review was made or in the local land-office, for transmittal to the general land-office; and, except when based upon newly discovered evidence, must be filed within thirty days from notice of such decision.

Rule 78. Motions for rehearing and review must be accompanied by an affidavit of the party, or his attorney, that the motion is made in good faith, and not for the purpose of delay.

Rule 79. The time between the filing of a motion for rehearing or review and the notice of the decision upon such motion shall be excluded in computing the time allowed for appeal.

Rule 80. No officer shall entertain a motion in a case after an appeal from his decision has been taken.

§ 644. **Same. 3. Appeal from the commissioner to the Secretary.** Rule 81. No appeal shall be had from the action of the commissioner of the general land-office affirming the decision of the local officers in any case where the party or parties adversely affected thereby shall have failed, after due notice, to appeal from such decision of said local officers.

Subject to this provision, an appeal may be taken from the decision of the commissioner of the general land-office to the Secretary of the Interior upon any question relating to the disposal of the public lands and to private land claims, except in case of interlocutory orders and decisions and orders for hearing or other matter resting in the discretion of the commissioner. Decisions and orders forming the above exception will be noted in the record, and will be considered by the Secretary on review in case an appeal upon the merits be finally allowed.

Rule 82. When the commissioner considers an appeal defective, he will notify the party of the defect, and if not amended within fifteen days from the date of the service of

such notice the appeal may be dismissed by the Secretary of the Interior and the case closed.

Rule 83. In proceedings before the commissioner in which he shall formally decide that a party has no right of appeal to the Secretary, the party against whom such decision is rendered may apply to the Secretary for an order directing the commissioner to certify said proceedings to the Secretary and to suspend further action until the Secretary shall pass upon the same.

Rule 84. Applications to the Secretary under the preceding rule shall be made in writing, under oath, and shall fully and specifically set forth the grounds upon which the application is made.

Rule 85. When the commissioner shall formally decide against the right of an appeal, he shall suspend action on the case at issue for twenty days from service of his decision, to enable the party against whom the decision is rendered to apply to the Secretary for an order, in accordance with rules 83 and 84.

Rule 86. Notice of an appeal from the commissioner's decision must be filed in the general land-office and served on the appellee or his counsel within sixty days from the date of the service of notice of such decision.

Rule 87. When notice of the decision is given through the mails by the register and receiver or surveyor-general, five days additional will be allowed by those officers for the transmission of the letter and five days for the return of the appeal through the same channel before reporting to the general land-office.

Rule 88. Within the time allowed for giving notice of appeal the appellant shall also file in the general land-office a specification of errors, which specification shall clearly and concisely designate the errors of which he complains.

Rule 89. He may also, within the same time, file a written argument, with citation of authorities, in support of his appeal.

Rule 90. A failure to file a specification of errors within the time required will be treated as a waiver of the right of appeal, and the case will be considered closed.

Rule 91. The appellee may file a written argument in his behalf within thirty days from service of the argument of the appellant, where the latter files an argument within the time allotted by rule 89; otherwise, within thirty days from the expiration of the time so allotted to appellant.[9]

Rule 92. The appellant shall be allowed thirty days from service of argument of appellee in which to file argument strictly in reply, and no other or further arguments or motions of any kind shall be filed without permission of the commissioner or Secretary and notice to the opposite party.

Rule 93. A copy of the notice of appeal, specification of errors, and all arguments of either party shall be served on the opposite party within the time allowed for filing the same.

Rule 94. Such service shall be made personally or by registered letter.

Rule 95. Proof of personal service shall be the written acknowledgment of the party served or the affidavit of the person making the service, attached to the papers served, and stating time, place, and manner of service.

Rule 96. Proof of service by registered letter shall be the affidavit of the person mailing the letter, attached to a copy of the post-office receipt.

Rule 97. Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notices and papers by mail, except in case of notice to resident attorneys, when one day will be allowed.

Rule 98. Notice of interlocutory motions and proceedings before the commissioner and Secretary shall be served personally or by registered letter, and service proved as provided in rules 94 and 95.

Rule 99. No motion affecting the merits of the case or the regular order of proceedings will be entertained except on due proof of service of notice.

Rule 100. Ex parte cases and cases in which the adverse party does not appear will be governed by the foregoing rules as to notices of decisions, time for appeal, and filing

[9] Rule 91 took effect Sept. 1, 1901.

of exceptions and arguments, as far as applicable. In such cases, however, the right to file additional evidence at any stage of the proceedings to cure defects in the proof or record will be allowed.

Rule 101. No person hereafter appearing as a party or attorney in any case shall be entitled to a notice of the proceedings who does not at the time of his appearance file in the office in which the case is pending a statement in writing, giving his name and post-office address and the name of the party whom he represents; nor shall any person who has heretofore appeared in a case be entitled to a notice unless within fifteen days after being requested to file such statement he shall comply with said requirement.

Rule 102. No person not a party to the record shall intervene in a case without first disclosing on oath the nature of his interest.

Rule 103. When the commissioner makes an order or decision affecting the merits of a case or the regular order of proceedings therein, he will cause notice to be given to each party in interest whose address is known.

§ 645. **Same. 4. Attorneys.** Rule 104. In all cases, contested or ex parte, where the parties in interest are represented by attorneys, such attorneys will be recognized as fully controlling the cases of their respective clients.

Rule 105. All notices will be served upon the attorneys of record.

Rule 106. Notice to one attorney in a case shall constitute notice to all counsel appearing for the party represented by him, and notice to the attorney will be deemed notice to the party in interest.

Rule 107. All attorneys practising before the general land-office and Department of the Interior must first file the oath of office prescribed by section 3478, United States Revised Statutes.

Rule 108. In the examination of any case, whether contested or ex parte, the attorneys employed in said case, when in good standing in the Department, for the preparation of arguments, will be allowed full opportunity to consult the

records of the case, the abstracts, field-notes, and tract-books, and the correspondence of the general land-office or of the Department not deemed privileged and confidential; and whenever, in the judgment of the commissioner it would not jeopardize any public or official interest, may make verbal inquiries of chiefs of divisions at their respective desks in respect to the papers or status of said case; but such inquiries will not be made to said chiefs or other clerks of division except upon consent of the commissioner, assistant commissioner, or chief clerk, and will be restricted to hours between 11 a. m. and 2 p. m.

Rule 109. Any attorney detected in any abuse of the above privileges, or of gross misconduct, upon satisfactory proof thereof, after due notice and hearing, shall be prohibited from further practising before the Department.

Rule 110. Should either party desire to discuss a case orally before the Secretary, opportunity will be afforded at the discretion of the Department, but only at a time specified by the Secretary or fixed by stipulation of the parties, with the consent of the Secretary, and in the absence of such stipulation or written notice to opposing counsel, with like consent, specifying the time when argument will be heard.

Rule 111. The examination of cases on appeal to the commissioner or Secretary will be facilitated by filing in printed form such arguments as it is desired to have considered.

§ 646. **Same. 5. Decisions.** Rule 112. Decisions of the commissioner not appealed from within the period prescribed become final, and the case will be regularly closed.

Rule 113. The decision of the Secretary, so far as respects the action of the executive, is final.

Rule 114. Motions for review or rehearing before the Secretary must be filed with the commissioner of the general land-office within thirty days after notice of the decision complained of, and will act as a supersedeas of the decision until otherwise directed by the Secretary. Any such motion must state concisely and specifically the grounds for review

or rehearing, one or both as the case may be, upon which it is based, and may be accompanied by an argument in support thereof.

Upon its receipt, the commissioner of the general land-office will forward the motion immediately to this Department, where it will be treated as "special." If the motion does not show proper grounds for review or rehearing, it will be denied and sent to the files of the general land-office, whereupon the commissioner will remove the suspension and proceed to execute the decision before rendered. But if, upon examination, proper grounds are shown, the motion will be entertained and the moving party notified, whereupon he will be allowed thirty days within which to serve the same, together with all argument in support thereof, on the opposite party, who will be allowed thirty days thereafter in which to file and serve an answer, but consideration of the motion will not be deferred for further argument.

Rule 115. None of these rules shall be construed to deprive the Secretary of the Interior of either the directory or supervisory power conferred upon him by law.[10]

§ 647. Writ of certiorari. Petition should contain copy of decision complained of. A petition for the writ of certiorari should be accompanied by a copy of the decision or decisions of the commissioner of the general land-office complained of.

Failure to file an appeal within the time required by the Rules of Practice will not of itself deprive a litigant of the right to the relief he may be justly entitled to; but such relief will be granted, in a proper case, through the exercise of the supervisory authority of the Secretary, although the right of appeal may have been properly denied.

A petition for the writ of certiorari will not be granted unless it be shown that the decision of the commissioner of the general land-office complained of is erroneous, even though it may clearly appear that he erred in refusing to transmit an appeal from said decision.[11]

[10] The foregoing rules, numbered 1 to 115, will be found in 31 Land Dec. 527 to 543, inclusive.

[11] Elfrink v. Lundell, 33 Land Dec. 160, decided April 14, 1904.

§ 648. **Practice. Appeal. Certiorari.** Rule 83. The writ of certiorari provided for by rule 83 of the Rules of Practice is designed as a remedy in cases in which the commissioner of the general land-office formally decides that a party has no right of appeal, and is not intended to perform the office of an appeal in case a party fails to appeal within the time prescribed by the Rules of Practice.

While the Department may, and in a proper case should, review the proceedings of the general land-office in respect to the public lands, in the absence of an appeal, it will not ordinarily exercise this power upon the application of a party to the proceedings, in the absence of a clear and concise designation of the errors complained of by him.[12]

§ 649. **Regulations governing the recognition of agents and attorneys before district land-officers.** 1. An attorney at law who desires to represent claimants or contestants before a district land-office must file a certificate, under the seal of the United States, state, or territorial court for the judicial district in which he resides or the local land-office is situated, that he is an attorney in good standing.

2. Any person (not an attorney at law) who desires to appear as an agent for claimants or contestants before a district land-office must file a certificate from a judge of a United States court, or of a state or territorial court having common-law jurisdiction, except probate courts, in the county wherein he resides or the local office is situated, duly authenticated under the seal of the court, that such person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render clients valuable service, and otherwise competent to advise and assist them in the presentation of their claims or contests.

3. The oath of allegiance required by section 3478 of the United States Revised Statutes must also be filed by applicants. In case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required.

[12] Orbison v. State of Utah, 33 Land Dec. 39.

4. An applicant to practise under the above regulations must address a letter to the register and receiver, inclosing the certificate and oath above required, in which letter his full name and post-office address must be given. He must state whether or not he has ever been recognized as an attorney or agent before this Department or any bureau thereof, or any of the local land-offices, and, if so, whether he has ever been suspended or disbarred from practice. He must also state whether he holds any office under the government of the United States.

5. After an application to practise has been filed in due form, the register and receiver will enroll the name and post-office address of the applicant upon a record kept by them for that purpose, and sign and deliver to him a certificate of such enrolment, and thereafter recognize the applicant as an attorney or agent, as the case may be, unless they have good reason to believe that the person making the application is unfit to practise before their offices, in which case they will at once forward the application to the commissioner of the general land-office, with a report giving full specification of their reasons for so doing, and furnish a copy of such report to the applicant, and notify him that he will be allowed to file a reply thereto with said commissioner within thirty days from such notice.

6. When you have recognized and enrolled the name of any person as an attorney or agent, you will at once advise the commissioner of the general land-office of that fact, and give the name and post-office address of such person.

7. An attorney or agent who has been admitted to practise in any particular land district, or in the Department of the Interior, may be enrolled and authorized to practise in any other district upon filing with the register and receiver of such district a certificate of the register and receiver before whom he was admitted to practice, or a certificate of the commissioner of the general land-office, that he is an attorney or agent in good standing.

8. Every attorney must, either at the time of entering his appearance for a claimant or contestant, or within thirty days thereafter, file written authority for such appearance,

signed by said claimant or contestant, and setting forth his or her present residence, occupation, and post-office address. Upon a failure to file such written authority within the time limited, it is the duty of the register and receiver to no longer recognize him as attorney in the case.

9. When the appearance is for a person other than a claimant or contestant of record, the attorney or agent will be required to state the name of the person for whom he appears, his post-office address, the character and extent of his interest in the matter involved, and when and from what source it was acquired. Authorizations and powers signed or executed in blank will not be recognized.

10. If any attorney or agent shall knowingly commit any of the following acts, viz.: Represent fictitious or fraudulent entrymen; prosecute collusive contests; speculate in relinquishments of entries; assist in procuring illegal or fraudulent entries or filings; represent himself as the attorney or agent of entrymen when he is only attorney or agent for a transferee or mortgagee; conceal the name or interest of his client; give pernicious advice to parties seeking to obtain title to public land; attempt to prevent a qualified person from settling upon, entering, or filing for a tract of public land properly subject to such entry or filing, or be otherwise guilty of dishonest or unprofessional conduct, or who, in connection with business pending in local land-offices or in this Department, shall knowingly employ as subagent, clerk, or correspondent a person who has been guilty of any one of these acts, or who has been prohibited from practising before the register and receiver or this Department, it will be sufficient reason for his disbarment from practice.

11. When any register and receiver shall, either through their own personal knowledge or through any charge sworn to by some other person, have information that an attorney or agent admitted to practise before their office has been guilty of any act or misconduct which would warrant his disbarment, such register and receiver shall at once make investigation; and if they have or find reasonable grounds for believing the attorney or agent guilty of such acts of misconduct, they will at once formulate specific charges

against him and forward the same to the commissioner of the general land-office for his consideration and such action thereunder as he may direct.

12. If the commissioner of the general land-office finds that any charges preferred by any register and receiver are sufficient to support a disbarment proceedings, he will at once forward the charges submitted to him to the register and receiver with his approval and such directions as he may deem necessary, and thereafter the register and receiver will at once furnish a copy of the charges to the accused attorney or agent, and notify him that unless he, within thirty days from such notice, files in their office a denial of such charges under oath, the charges will be taken as confessed and forwarded with the register's and receiver's report thereon to the commissioner of the general land-office for further appropriate action.

13. In all cases where denials are filed as required by rule 12 hereof, the register and receiver will at once fix a day for a hearing under such charges and thereafter proceed in the manner prescribed by the Rules of Practice regulating other hearings before their office.

14. In all cases where an accused attorney or agent fails to file a denial as required by rule 12 hereof, and in all cases where the register and receiver have rendered a decision, either favorable or unfavorable to the accused attorney or agent, after a hearing, they will at once make report and recommendation thereon to the commissioner of the general land-office, and furnish the accused attorney or agent with a copy of such report and decision, and notify him that he will be allowed thirty days from date of such notice within which to file his objections thereto with the commissioner.

15. After the expiration of the thirty days mentioned in rule 14, or sooner if the accused attorney or agent so request it, the commissioner of the general land-office will consider the record and recommendations forwarded by the register and receiver, and if in his judgment disbarment is not warranted, he will dismiss the charges and notify the register and receiver and the accused attorney or agent thereof; but if he finds that disbarment is warranted, he will render his decision so holding and notify the accused attorney or agent

thereof and of his right of appeal therefrom within the time and in the manner prescribed by the Rules of Practice for other appeals to the Secretary of the Interior.

16. If any accused attorney or agent shall fail to appeal from the decision of the commissioner of the general land-office as prescribed in rule 15, or if the decision of the commissioner is affirmed on such appeal, such attorney or agent will thereafter stand disbarred and be precluded from representing claimants or contestants before the local land-offices, and the accused attorney or agent and the register and receiver will be so notified.

17. Prior to their actual disbarment attorneys and agents will be recognized as such, unless for special reasons the Secretary of the Interior shall order their suspension from practice during the pendency of the proceedings against them, but registers and receivers will in no case attempt to suspend them.

[Signed] R. A. Ballinger, Commissioner. Approved April 20, 1907: James Rudolph Garfield, Secretary.[13]

§ 650. Laws and regulations governing the recognition of agents, attorneys, and other persons to represent claimants before the Department of the Interior and the bureaus thereof. 1. Laws. The following statutes relate to the recognition of attorneys and agents for claimants before this Department:

"That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his Depart-

[13] 35 Land Dec. 534.

ment any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement." [14]

"Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any executive department of the government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both." [15]

"It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee." [16]

"Any person prosecuting claims, either as attorney or on his own account, before any of the departments or bureaus of the United States, shall be required to take the oath of

[14] Act July 4, 1884, § 5, 23 Stats. at L., p. 101; 2 Fed. Stats. Ann., p. 16.

[15] U. S. Rev. Stats., § 5498; 6 Fed. Stats. Ann., p. 611.

[16] U. S. Rev. Stats., § 190; 2 Fed. Stats. Ann., p. 6.

allegiance, and to support the constitution of the United States, as required of persons in the civil service." [17]

"The oath provided for in the preceding section may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the state or district where the same may be administered." [18]

The act of May 13, 1884, § 2,[19] provides that the oath above required shall be that prescribed by section 1757, Revised Statutes, which is as follows:

I, A B, do solemnly swear (or affirm) that I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

§ 651. Same. 2. Regulations. 1. Under the authority conferred on the Secretary of the Interior by the fifth section of the act of July 4, 1884, it is hereby prescribed that an attorney at law who desires to represent claimants before the Department or one of its bureaus shall file a certificate of the clerk of the United States, state, or territorial court, duly authenticated under the seal of the court, that he is an attorney in good standing.

2. Any person (not an attorney at law) who desires to appear as agent for claimants before the Department or one of its bureaus must file a certificate from a judge of a United States, state, or territorial court, duly authenticated under the seal of the court, that such person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render claimants valuable service, and otherwise competent to advise and assist them in the presentation of their claims.

[17] U. S. Rev. Stats., § 3478; 2 Fed. Stats. Ann., p. 13.
[18] U. S. Rev. Stats., § 3479; 2 Fed. Stats. Ann., p. 13.
[19] 23 Stats. at L., p. 22; 6 Fed. Stats. Ann., p. 581.

3. The Secretary may demand additional proof of qualifications, and reserves the right to decline to recognize any attorney, agent, or other person applying to represent claimants under this rule.

4. The oath of allegiance required by section 3478 of the United States Revised Statutes must also be filed.

5. In the case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required.

6. Unless specially called for, the certificate above referred to will not be required of any attorney or agent heretofore recognized and now in good standing before the Department.

7. An applicant for admission to practise under the above regulations must address a letter to the Secretary of the Interior, inclosing the certificate and oath above required, in which letter his full name and post-office address must be given. He must state whether or not he has ever been recognized as attorney or agent before this Department or any bureau thereof, and, if so, whether he has ever been suspended or disbarred from practice. He must also state whether he holds any office of trust or profit under the government of the United States.

8. No person who has been an officer, clerk, or employee of this Department within two years prior to his application to appear in any case pending herein shall be recognized or permitted to appear as an attorney or agent in any such case as shall have been pending in the Department at or before the date he left the service: provided, this rule shall not apply to officers, clerks, or employees of the patent-office, nor to cases therein.

9. Whenever an attorney or agent is charged with improper practices in connection with any matter before a bureau of this Department, the head of such bureau shall investigate the charge, giving the attorney or agent due notice, together with a statement of the charge against him, and allow him an opportunity to be heard in the premises. When the investigation shall have been concluded, all the papers shall be forwarded to the Department.

with a statement of the facts and such recommendations as to disbarment from practice as the head of the bureau may deem proper, for the consideration of the Secretary of the Interior. During the investigation the attorney or agent will be recognized as such, unless for special reasons the Secretary shall order his suspension from practice.

10. If any attorney or agent in good standing before the Department shall knowingly employ as subagent or correspondent a person who has been prohibited from practice before the Department, it will be sufficient reason for the disbarment of the former from practice.

11. Upon the disbarment of an attorney or agent, notice thereof will be given to the heads of bureaus of this Department, and to the other executive departments; and thereafter, until otherwise ordered, such disbarred person will not be recognized as attorney or agent in any claim or other matter before this Department or any bureau thereof.[20]

§ 652. **Compulsory attendance of witnesses. Under act of January 31, 1903. Circular of the Department of the Interior, March 20, 1903.** Under the provisions of the act of Congress approved January 31, 1903,[21] entitled "An act providing for the compulsory attendance of witnesses before registers and receivers of the land-office," [22] witnesses may be compelled to appear and testify before registers and receivers.

The first section of the act authorizes and empowers the register and receiver, or either of them, to issue subpœnas directing the attendance of witnesses at hearings to be held before them; and requires such witnesses, when duly served as herein provided, in the county wherein the land-office is situated to attend in obedience to the summons.

Registers and receivers, or either of them, when requested in writing, by either party to a cause pending before them, will issue a subpœna for such witnesses as the applicant may desire to testify in his behalf at such hearing.

[20] 31 Land Dec. 546, 547.

[21] 32 Stats. at L., p. 790; 10 Fed. Stats. Ann., p. 355.

[22] See 10 Fed. Stats. Ann., pp. 355, 356; also U. S. Comp. Stats. 1901, Sup. 1905, pp. 313-315.

The subpœna may be in the following form:

The United States of America.

To —— ——.

You are hereby commanded to be and appear before —— ——, at —— office, in ——, in the county of ——, state (or territory) of ——, at the hour of — M. on the —— day of ——, 190—, to testify in behalf of —— ——, at a hearing to be then and there held, wherein —— —— is —— and —— —— is ——, and herein fail not at your peril.

Issued this —— day of ——, 190—. —— ——
—— ——

The service of the subpœna and proof of the same as provided in said section will devolve upon the party in whose behalf the subpœna is issued, and the officer issuing the same shall deliver to such party the original and a copy of the same for each witness named therein. No fee is provided for the register and receiver for issuing such process.

Section 2 of the act fixes the fees and mileage of witnesses attending before registers and receivers at same rates as those provided by law in district courts of the United States for the district in which the land-office is situated, and gives to witness the right to receive the fee for one day's attendance and mileage in advance, and also entitles him to receive his fee for attendance in advance from day to day during the hearing. Such payments must be made by the respective parties to the hearing in whose behalf the witness is subpœnaed, except in cases in which the United States is a party. In such cases the receiver will pay the fees and mileage of the witnesses on behalf of the government, and it will be his duty to make requisition based upon an estimate furnished by the special agent for funds to pay all expenses chargeable to the United States in such hearings.

Section 3 fixes the punishment to which persons are liable who wilfully neglect or refuse obedience to such subpœna and provides the method of enforcing the same, which shall be by indictment in the district court of the United States

or in the district courts of the territories exercising the jurisdiction of circuit courts of the United States.

Section 4 authorizes any party to the proceedings to take the testimony of any witness, who resides outside of the county in which the hearing occurs, by deposition, which, upon ten days' previous notice, may be taken before any United States commissioner, notary public, judge or clerk of a court of record in the county where the witness resides. In such case the party desiring to take the deposition will be required to file with the register or receiver an affidavit setting forth the name and address of the witness; that he resides outside the county in which the land-office is situated, and that for such reason he desires to take the testimony of the witness named, in the form of a deposition. Whereupon it shall be the duty of the register or receiver, or either of them, to enter an order designating the time and place at which such deposition will be taken, and to issue a commission to some officer designated by this act to take the same. In such case either the register or receiver or the officer before whom the deposition is to be taken is authorized to issue subpœna for the witness, using substantially the form hereinbefore prescribed, and disobedience thereof as defined in the act is punishable as in case of violation of a subpœna to appear before the register or receiver. Witnesses attending before such officers are entitled to the same fees and mileage and payable in the same manner, as if they appeared before the register and receiver at the district land-office, and the fees of the officer taking such deposition will be the same as those allowed to such officers respectively for taking depositions to be used in the state or territorial courts. Such fees are to be paid by the party taking the deposition, and the officer taking the same is required to attach thereto an itemized account of the fees charged and collected.

It will be the duty of the register and receiver to see that this requirement is observed.

Section 5 extends to the opposite party the right to take depositions before the same officer, at once upon the conclusion of the first depositions; and he is entitled to have his witnesses summoned in like manner and subject to the same

conditions as his antagonist: provided that notice of the intention to take such testimony is given to the opposite party, his agent or attorney, "before taking of the depositions in the first instance is entered upon."

To aid in enforcing the punitive provisions of this act, in issuing a commission to take testimony you will instruct the commissioner to make special return to you of the names of any witness who, after service has failed, under the provisions of § 3, do respond to the subpœna, and you will make prompt report to the United States district attorney of the proper district, of the names of such party or parties as well as of those who having been duly summoned have failed to appear before you, to the end that he may take such action in the premises as the law requires.

The object and purpose of this act is to afford to litigants the means of enforcing the attendance of witnesses when hearings are ordered. It is not exclusive in its operation to the extent of abolishing the existing methods, under the rules, by which the attendance of witnesses may be secured or their testimony taken by deposition; and parties may elect to use either method of procedure. But should they think proper to proceed under the existing rules of practice and fail to secure the attendance of their witnesses, they will not be entitled to a continuance as heretofore.[23]

§ 653. **Same. Amendments to circular.** Amendments to Circular of Instructions of March 20, 1903,[24] to carry into effect the provisions of the act of January 31, 1903,[25] entitled "An act providing for the compulsory attendance of witnesses before registers and receivers of the land-office."

Said act is set out in full in the circular of which this is an amendment, to which reference is hereby made. The second section of said act provides in part that "the fees and mileage of witnesses shall be the same as that provided by law in the district courts of the United States in the district in which such land-offices are situated."

[23] 32 Land Dec. 132.
[24] Amendment approved June 27, 1904; 32 Land Dec. 132.
[25] 32 Stats. at L., p. 790; 10 Fed. Stats. Ann., p. 355.

The fourth section of the act provides:

That whenever the witness resides outside the county in which the hearing occurs any party to the proceedings may take the testimony of such witness in the county of such witness's residence in the form of depositions by giving ten days' written notice of the time and place of taking such depositions to the opposite party or parties.

The general law fixing the fees of witnesses for attendance upon United States courts to which reference must be had in determining the fees and mileage allowed under the act of January 31, 1903, is found in section 848, Revised Statutes, which is as follows:

Sec. 848. For each day's attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpœnaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day.

A special rate for mileage in certain states and territories is provided for by the act of August 3, 1892,[26] which is as follows:

"That jurors and witnesses in the United States courts in the states of Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, and Colorado, and in the territories of New Mexico, Arizona, and Utah, shall be entitled to and receive fifteen cents for each mile necessarily traveled over any stage line or by private conveyance and five cents for each mile over any railway in going to and returning from said court: provided, that no constructive or double mileage fees shall be allowed by reason of any person being sum-

[26] 27 Stats. at L., p. 347.

moned both as witness and juror, or as witness in two or more cases pending in the same court and triable at the same term thereof."

By section 877 of the Revised Statutes it is provided that—

Witnesses who are required to attend any term of a circuit or district court on the part of the United States shall be subpœnaed to attend to testify generally on their behalf, and not to depart the court without leave thereof or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney.

1. No witness can be compelled to appear, either before your office or any other officer, outside the county in which the subpœna may be served, and no mileage fees should be demanded or paid for any distance traveled by the witness outside of the county in which the hearing is held or in which his deposition is taken, nor should an attendance fee be allowed or paid a witness for the time occupied by him in going to and returning from the place at which the hearing is held or the deposition is taken.

2. Where the same person appears as a witness in more than one case at the same time, between the same parties, you should tax the mileage fees to be received by him as costs in the first case in which action is taken, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

3. In the application of the provisions of section 848 of the Revised Statutes to the act of January 31, 1903, a witness is entitled to receive one dollar and fifty cents for each day's attendance before the officer taking the testimony and five cents for each mile actually and necessarily traveled by him within the county in which the hearing is held or in which the deposition is taken, in going to and returning from the hearing, in each case in which he may have been in attendance pursuant to law, regardless of the fact that he may have been in attendance as a witness in more than one case before the same officer at the same time. This is a general rule applicable in all cases and to all parties. In cases where a witness is required to attend any term of a circuit

or district court on the part of the United States, it is provided by section 877 of the Revised Statutes that such witness shall be subpœnaed to testify generally on their behalf, and not to depart the court without leave thereof or of the district attorney. This provision is designed to restrain the officers in the issuing of subpœnas in different cases in order to avoid the unnecessary expense of more than one travel fee and one per diem compensation to the same witness in attending upon the same court. The provisions of that section should be strictly observed and applied by local officers and special agents in issuing subpœnas for witnesses to appear and testify in behalf of the United States in proceedings under the act of January 31, 1903. Therefore in all instances where the testimony of a person is desired on behalf of the government as a witness in more than one case set for hearing at the same time and place, or on successive days, before the same officer, such witness should be subpœnaed to appear and testify generally, and he should be notified either in the subpœna, or otherwise, not to depart without leave of the officer, or officers, before whom the hearing is had or the deposition is taken.

4. Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy, or at the request of the attorney or duly authorized agent of such party, without having been subpœnaed to so attend, should receive the same mileage and attendance fees to which he would have been entitled if he had been first duly subpœnaed as a witness on behalf of such party.

Care should be taken that payments to clerks and other officers of the United States for necessary expenses in going, returning, and attendance at the hearing are made under the provisions of section 850 of the United States Revised Statutes.

The register and receiver alone are authorized by this office to employ a stenographer where one becomes necessary to reduce the testimony to writing. Where a commission is issued to an officer to take depositions it is his duty to provide for the necessary clerical services to comply with

such commission, at his own expense, and he is entitled to the fees allowed by law for taking depositions.

The voucher of the officer taking the deposition must cite the statute and page under which he claims fees for his services.

The receiver will report in his account the date set for each hearing, and the date, or dates, when the hearing was actually held, and all vouchers or fees paid by him to witnesses should show the witness's post-office address, the dates he was actually in attendance at the hearing, the number of miles actually and necessarily traveled in going to and returning from the place of hearing or the place at which the depositions were taken, and the number traveled over any stage line or by private conveyance, in the states and territories named in the act quoted above. And the receiver should attach to each account his certificate to the effect that he has, after proper examination, satisfied himself as to the correctness of the amounts paid out by him to the witnesses.[27]

[27] 33 Land Dec. 58-60.

CHAPTER IX.

STATE AND TERRITORIAL STATUTES. ARIZONA.

MINING LAWS.

§ 654. Who may make location.
§ 655. Marking boundaries.
§ 656. What notice of location must contain.
§ 657. Statute must be complied with.
§ 658. Time to record copy of location-notice.
§ 659. Time to sink discovery-shaft.
§ 660. Time allowed to monument claim.
§ 661. Failure to comply with statute forfeits claim.
§ 662. Manner of marking surface boundaries.
§ 663. Equivalent of discovery-shaft.
§ 664. Amendment of notice of location.
§ 665. Assessment-work.
§ 666. Affidavit of assessment-work.
§ 667. Form of affidavit of assessment-work.
§ 668. Location of abandoned claim.
§ 669. Manner of locating placer claim.
§ 670. Placer claims. How monuments must be placed.
§ 671. Recording notice of location.
§ 672. Forfeiture of interest of co-owner.
§ 673. Record of forfeiture as evidence.
§ 674. Acknowledgment of contribution by delinquent co-owners.
§ 675. Penalty for failure to acknowledge contribution.
§ 676. Affidavits by third persons.

§ 654. Who may make location. On the discovery of mineral in place on the public domain of the United States, the same may be located as a mining claim by the discoverer for himself, or for himself and others, or for others.[1]

§ 655. Marking boundaries. A location must be made by erecting at, or contiguous to, the point of discovery, a conspicuous monument of stones not less than three feet in height, or an upright post securely fixed projecting at least four feet above the ground, in which monument of stones or on which post there shall be posted a notice of location.[2]

[1] Ariz. Rev. Stats. 1901, § 3231.
[2] Ariz. Rev. Stats. 1901, § 3232.

§ 656. **What notice of location must contain.** The notice of location shall be signed by the name or names of the locator or locators, and must contain:

[1] the name of the claim located;

[2] the name or names of the locators;

[3] the date of the location;

[4] the length and width of the claim in feet, and the distance in feet from the point of discovery to each end of the claim;

[5] the general course of the claim;

[6] the locality of the claim with reference to some natural object or permanent monument whereby the claim can be identified.[3]

§ 657. **Statute must be complied with.** It is expressly provided that until each and all of the things just stated shall have been done no rights to the mining claim are acquired.[4]

§ 658. **Time to record copy of location-notice.** A locator of a mining claim is allowed ninety days from the time of the location in which to record or cause to be recorded in the office of the county recorder in which the claim is situated, a copy of the notice of location.[5]

County recorder is allowed $1.00 for recording each notice of location.[6]

§ 659. **Time to sink discovery-shaft.** A locator is allowed ninety days from the time of the location within which to sink a discovery-shaft in the claim to a depth of at least ten feet from the lowest part of the rim of the shaft at the surface, and deeper, if necessary, until there is disclosed in the shaft mineral in place.[7]

[3] Ariz. Rev. Stats., § 3232.
[4] Ariz. Rev. Stats. 1901, § 3233.
[5] Ariz. Rev. Stats. 1901, § 3234.
[6] Ariz. Rev. Stats. 1901, § 2596.
[7] Ariz. Rev. Stats. 1901, § 3234.

§ 660. **Time allowed to monument claim.** A locator is allowed ninety days from the time of the location within which to monument the claim on the ground so that its boundaries can be readily traced.[8]

§ 661. **Failure to comply with statute forfeits claim.** It is expressly provided that failure on the part of the locator to do all the things enumerated in the statute in the time and place specified constitutes an abandonment of the claim, and all rights thereto on the part of the discoverer or the locator are forfeited.[9]

§ 662. **Manner of marking surface boundaries.** The surface boundaries of a mining claim shall be marked by six substantial posts projecting at least four feet above the surface of the ground, or by substantial stone monuments at least three feet high: one at each corner of the claim and one at the center of each end line thereof.[10]

§ 663. **Equivalent of discovery-shaft.** Any open cut, adit or tunnel made as part of the location of a lode mining claim and which equals in amount the work of sinking a shaft ten feet deep and four feet wide by six feet long and which cuts a lode or mineral in place at a depth of ten feet from the surface is equivalent as discovery-work to a shaft sunk from the surface.[11]

§ 664. **Amendment of notice of location.** A notice of location may be amended at any time and the monuments changed to correspond with the amended location, provided that the change shall not interfere with the rights of others.[12]

§ 665. **Assessment-work.** The amount of annual assessment or representation work or improvements and the time

[8] Ariz. Rev. Stats. 1901, § 3234.
[9] Ariz. Rev. Stats. 1901, § 3235.
[10] Ariz. Rev. Stats. 1901, § 3236.
[11] Ariz. Rev. Stats. 1901, § 3237.
[12] Ariz. Rev. Stats. 1901, § 3238.

for doing the same is the same as provided by the Federal mining act.[13]

§ 666. **Affidavit of assessment-work.** Within three months after the expiration of the period of time fixed for the performance of annual labor or making improvements upon any mining claim, the person on whose behalf the work or improvement was made, or some person for him knowing the facts, may make and record in the office of the county recorder of the county wherein the claim is situated, an affidavit, in the form hereafter set out.[14]

§ 667. **Form of affidavit of assessment-work.** The form of the affidavit of assessment or improvement work is as follows:

Territory of Arizona, }
County of ——, } ss.

—— ——, being duly sworn, deposes and says that he is a citizen of the United States and more than twenty-one years of age, resides at ——, in —— County, Arizona Territory, and is personally acquainted with the mining claim known as —— mining claim, situated in —— mining district, Arizona Territory, the location-notice of which is recorded in the office of the county recorder of said county, in book —— of records of mines, at page ——. That between the —— day of ——, A. D. ——, and the —— day of ——, A. D. ——, at least —— dollars' worth of work and improvements were done and performed upon said claim, not including the location-work of said claim. Such work and improvements were made by and at the expense of —— ——, owners of said claim, for the purpose of complying with the laws of the United States pertaining to assessments of annual work, and [here name the miners or men who worked upon the claim in doing the work] were the men employed by said

[13] Ariz. Rev. Stats. 1901, § 3239. See also ante, § 417.
[14] Ariz. Rev. Stats. 1901, § 3240.

owner and who labored upon said claim, did said work and improvements, the same being as follows, to wit: [Here describe the work done.]

(Signature) —— ——.

Subscribed and sworn to before me this —— day of ——, A. D. ——. My commission as notary public expires on the —— day of ——, A. D. ——.

[Notarial seal] —— ——, Notary Public.

Such affidavit, when so recorded, shall be prima facie evidence of the performance of such labor or improvements, and said original affidavit, after it has been recorded, or a certified copy thereof, or the record thereof, shall be received as evidence accordingly by the courts of this territory.[15]

§ 668. **Location of abandoned claim.** The location of an abandoned or forfeited claim shall be made in accordance with the provisions of paragraph 3232 (sec. 2), of title 47, chapter XLVII of the Revised Statutes of Arizona, 1901, except that the relocator may, if he so elect, perform his location-work by sinking the original location-shaft ten feet deeper than it was originally, or in case the original location-work consisted of a tunnel or open cut, he may perform his location-work by extending said tunnel or open cut by removing therefrom 240 cubic feet of rock or vein material.[16]

§ 669. **Manner of locating placer claim.** The locator of a placer mining claim shall locate his claim as follows:

By posting a notice of location on the claim containing

[1] the name of the claim;

[2] the name of the locator or locators;

[3] the date of the location;

[4] the number of acres claimed, and

[5] a description of the claim with reference to some natural object or permanent monument which will identify

[15] Ariz. Rev. Stats. 1901, § 3241, as amended by Session Laws 1907, p. 27.

[16] Id.

the claim by marking the boundaries of his claim with a post or monument of stones at each angle of the claim located. When a post is used it must be at least four inches by four feet six inches in length, set one foot in the ground and surrounded by a mound of stone or earth.[17]

§ 670. **Placer claims. How monuments must be placed.** Where it is practically impossible on account of a bed of rock or precipitous ground to sink the proper posts, they may be placed in a pile of stones. And if for any reason it is impossible to erect and maintain a post or monument of stone at any angle of the claim, a witness post or monument may be used which may be placed as near the true corner as the nature of the ground will permit. When a mound of stone is used, it must be at least three feet in height and four feet in diameter at the base.[18]

§ 671. **Recording notice of location.** The locator of any placer claim shall, within sixty days after the date of location, record a copy of the notice of location in the office of the county recorder of the county in which the placer claim is situated. Any record of the location of a placer mining claim which shall not contain all the requirements of this section is void.[19]

§ 672. **Forfeiture of interest of co-owner.** Whenever a co-owner or co-owners shall give to a delinquent co-owner or co-owners the notice in writing or notice by publication provided for in section twenty-three hundred and twenty-four (2324) of the Revised Statutes of the United States, an affidavit of the person giving such notice, stating the time, place, manner of service, and by whom and upon whom such service was made, shall be attached to a true copy of such notice, and such notice and affidavit must be recorded in the office of the county recorder of the county in which the mining claim is situate within ninety (90) days after giving the

[17] Ariz. Rev. Stats. 1901, § 3242.
[18] Ariz. Rev. Stats. 1901, § 3243.
[19] Ariz. Rev. Stats. 1901, § 3244.

notice; or, if such notice is given by publication in a newspaper, there shall be attached to a printed copy of such notice an affidavit of the editor, publisher or foreman of such paper, stating the date of the first, last and each insertion of such notice therein, and when and where the newspaper was published during that time and the name of such newspaper. Such affidavit and notice shall be recorded as aforesaid within one hundred and eighty days after the first publication thereof.[20]

§ 673. **Record of forfeiture as evidence.** The original notice and affidavit, or the record thereof, shall be evidence that the delinquent mentioned in section 2324 has failed or refused to contribute his portion of the expenditure required by that section, and of the services or publication of the notice, provided the writing or affidavit hereinafter required is not of record.[21]

§ 674. **Acknowledgment of contribution by delinquent co-owners.** If a delinquent co-owner shall, "within the ninety days required by section 2324 aforesaid, contribute to his co-owner or co-owners his proportion of such expenditures, such co-owner or co-owners shall sign and deliver to the delinquent or delinquents, a writing, stating that the delinquent or delinquents, by name, has, within the time required by section 2324 of the Revised Statutes of the United States, contributed his share for the year —— upon the —— mine, and further stating therein the districts, county and territory wherein the same is situate, and the book and page where the location-notice is recorded. Such writing shall be recorded in the office of the county recorder of said county.[22]

§ 675. **Penalty for failure to acknowledge contribution.** A co-owner who fails to sign and deliver the proper writings to a delinquent co-owner within twenty days after contribu-

[20] Ariz. Rev. Stats. 1901, § 3215.
[21] Ariz. Rev. Stats. 1901, § 3216.
[22] Ariz. Rev. Stats. 1901, § 3217.

tion, is liable to a penalty of one hundred dollars, to be recovered by any person for the use of the delinquent or delinquents in any court of competent jurisdiction.[23]

§ 676. **Affidavits by third persons.** Where a co-owner fails to deliver the proper writing within twenty days after contribution, the delinquent, with two disinterested persons having personal knowledge of the contribution, may make an affidavit, setting forth in what manner, the amount of, and to whom and upon what mine the contribution was made; and this affidavit, or a record thereof, in the office of the county recorder of the county in which the mine is situate, is prima facie evidence of such contribution.[24]

[23] Ariz. Rev. Stats. 1901, § 3248.
[24] Id.

CHAPTER X.

STATE AND TERRITORIAL STATUTES. ARIZONA (CONTINUED).

GENERAL CORPORATION LAWS.

§ 677. Introduction. Incorporating in Western states.
§ 678. Formation of private corporations. Text of Arizona statutes.
§ 679. Same. Fees to resident agent.
§ 680. Same. Articles of incorporation, etc., to be filed. Duty of officers.
§ 681. Same. By-laws may provide for sale of shares upon failure to pay subscription.

§ 677. Introduction. Incorporating in Western states. Residents of an Eastern state frequently deem it advisable to incorporate a company in a Western state or territory, where the corporation laws are more liberal than in their home state, and, in view of this fact, the general incorporation laws of the territory of Arizona and of the state of Nevada have been set out verbatim herein. These statutes contain everything pertaining to the incorporation and conduct of mining companies. It must, however, be borne in mind that, for the purpose of jurisdiction in the Federal courts, a corporation is deemed to be a citizen of the state or territory creating it;[1] and that a citizen of a territory is not a citizen of a state, within the meaning of the Federal judiciary act, and cannot, upon the ground of diverse citizenship, maintain, in a Federal court, an action against a citizen of a state, or remove to such court, an action brought against it in a state court.[2]

[1] Baltimore R. Co. v. Kountz, 104 U. S. 5, bk. 26 L. ed. 643; Goodlett v. Louisville etc. R. Co., 122 U. S. 391, bk. 30 L. ed. 1230; Galveston etc. R. Co. v. Gonzales, 151 U. S. 501, bk. 38 L. ed. 248, 14 Sup. Ct. Rep. 403; Boughman v. National Water Works Co., 46 Fed. Rep. 4.

[2] Hooe v. Jamieson, 166 U. S. 395, bk. 41 L. ed. 1049; Barney v. Baltimore, 28 U. S. (6 Wall.) 280, bk. 18 L. ed. 825; New Orleans v. Winter, 12 U. S. (1 Wheat.) 91, bk. 4 L. ed. 44; Johnson v. Bunker Hill & S. M. & C. Co., 16 Fed. Rep. 417; Snead v. Sellers, 66 Fed. Rep. 371, 13 C. C. A. 518, 30 U. S. App. 8.

It is often of considerable advantage to a foreign corporation to have litigation about to be, or actually, commenced, instituted in, or removed to, a court not in the immediate vicinity of where the mining property may be situated. This can be done if the corporation litigant was organized under the laws of a state other than where the litigation is to be had, but not if it was organized under territorial laws.

§ 678. **Formation of private corporations. Text of Arizona statutes.** Any number of persons may associate themselves together and become incorporated for the transaction of any lawful business, but such corporation shall confer no powers or privileges not possessed by natural persons, except as herein provided.[3]

Among the powers of such bodies corporate shall be the following:

1. To have perpetual succession.
2. To sue and be sued by the corporate name.
3. To have a common seal and alter the same at pleasure.
4. To render the shares or interest of stockholders transferable and prescribe the mode of making such transfers.
5. To exempt the private property of members from liability for corporate debts.
6. To make contracts, acquire and transfer property, possessing the same powers in such respects as private individuals now enjoy.
7. To establish by-laws and make all rules and regulations deemed expedient for the management of their affairs not inconsistent with the constitution and laws of the United States and laws of this territory.[4]

Before commencing any business except that of their own organization, they must adopt articles of incorporation, which shall be signed and acknowledged by them as deeds are required to be acknowledged and recorded in a book for that purpose, in the office of the county recorder, where

[3] Ariz. Rev. Stats. 1901, p. 306, par. 764, § 4.
[4] Ariz. Rev. Stats. 1901, p. 306, par. 765, § 5.

the principle [principal] place of business is to be. The articles of incorporation must contain:

1. The name of the corporators, the name of the corporation, and its principle [principal] place of transacting business.

2. The general nature of the business proposed to be transacted.

3. The amount of capital stock authorized and the time when and the condition upon which it is to be paid in.

4. The time of the commencement and termination of the corporation.

5. By what officers or persons the affairs of the corporation are to be conducted and the times at which they are to be elected.

6. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself.

7. Whether private property is to be exempt from corporate debts. Unless so exempted, stockholders are liable for the debts of the corporation in the proportion to which their stock bears to the whole capital stock.[5]

Every corporation organized under the provisions of this title shall publish at least six times in some newspaper published in the county in which the principal place of business is located or works established, if there be one, and if not, then in some newspaper having a general circulation in such county, a copy of its articles of incorporation.[6]

Par. 770. (Sec. 10.) The capital stock of any corporation organized hereunder may be increased or decreased and the articles may be amended in any of the particulars mentioned in section 6 of this title[7] by the affirmative vote of a majority of the stock. Such amendment shall be signed and acknowledged by the president and attested by the secretary of the corporation and no such amendment shall be

[5] Ariz. Rev. Stats. 1901, par. 766, § 6, as amended by Session Laws 1903, p. 140.

[6] Ariz. Rev. Stats. 1901, par. 768, § 8.

Affidavit of publication must be filed with the territorial auditor: See post, p. 516.

[7] See Ariz. Rev. Stats. 1901, par. 766, as amended by Session Laws 1903, p. 140.

valid unless recorded and published as the original articles are required to be.[8]

All acts and parts of acts in conflict with the provisions of this act are hereby repealed.[9]

Corporations organized under this title may be formed to endure for twenty-five years, but they may be renewed from time to time for a period of not exceeding twenty-five years, when three fourths of the votes cast at any stockholders' meeting duly called and held for that purpose shall be in favor of such renewal.[10]

The corporation shall not be dissolved prior to the period fixed upon in the articles of incorporation, except by a majority vote of its members, unless a different rule is adopted in the articles.[11]

Transfer of the stock shall not be valid except as between the parties thereto, until the same are regularly entered upon the books of the company so as to show the names of the person by whom and to whom the transfer is made, the number or other designation of the shares, and the date of the transfer. The books of the company shall be so kept as to show intelligently the original stockholders, their respective interests, the amount of which has been paid thereon, and all transfers thereof, and such books or records or correct copies thereof, so far as they relate to the items mentioned in this section, shall at all times be subject to the inspection of any stockholder desiring the same.[12]

Any corporation organized or attempted to be organized in accordance with the provisions of this title shall cease to exist by non-user of its franchises for five years at any one time; but such body shall not forfeit its franchises by reason of any omission to elect officers or to hold meetings at any time prescribed by the by-laws.[13]

Corporations whose charters expire by their own limitation or by the voluntary act of the stockholders may, never-

[8] See Ariz. Rev. Stats. 1901, par. 766, as amended by Session Laws 1903, p. 140.
[9] Ariz. Session Laws 1903, p. 140, § 3.
[10] Ariz. Rev. Stats. 1901, par. 771, § 11.
[11] Ariz. Rev. Stats. 1901, par. 772, § 12.
[12] Ariz. Rev. Stats. 1901, par. 773, § 13.
[13] Ariz. Rev. Stats. 1901, par. 774, § 14.

theless, continue to act for the purpose of closing up the business, but for no other purpose, unless renewed as in this chapter provided.[14]

Nothing herein shall exempt the stockholders of any corporation from individual liability to the amount of the unpaid instalment on the stock owned by them, or transferred to them for the purpose of defrauding creditors; and an execution against the corporation to that extent may be levied upon the private property of such individual.[15]

For the purpose of making repairs, building or enlarging or extending works, or to meet contingencies, or for the purpose of providing a sinking fund for the payment of debts, the corporation may establish a fund and loan the same out from time to time, taking in all cases a good and sufficient security for the payment of the same.[16]

In any proceeding by or against a corporation, the court shall have the power to compel the officers of the corporation, on the motion of either party, upon proper cause being shown, to produce the books and records of the corporation, and when so produced, either party may use the same in evidence.[17]

Persons acting as a corporation under the provisions of this title shall be presumed to be legally organized until the contrary is shown, and no such franchise shall be declared to be actually null and forfeited except in a regular proceeding brought for that purpose.[18]

No persons acting as a corporation under the provisions of this title shall be permitted to set up or rely upon the want of a legal organization as a defense to any action brought against them as a corporation, nor shall any person who may be sued on a contract made with such corporation, or sued for an injury done to its property, or for a wrong done to its interests, be permitted to rely upon such want of legal organization in his defense.[19]

[14] Ariz. Rev. Stats. 1901, par. 775, § 15.
[15] Ariz. Rev. Stats. 1901, par. 776, § 16.
[16] Ariz. Rev. Stats. 1901, par. 777, § 17.
[17] Ariz. Rev. Stats. 1901, par. 778, § 18.
[18] Ariz. Rev. Stats. 1901, par. 779, § 19.
[19] Ariz. Rev. Stats. 1901, par. 780, § 20.

No corporation organized under the provisions of this title for the purpose of doing a mining or manufacturing business shall have power to construct or operate any railroad, tramway, turnpike or canal, except such as may lead from its principal works or place of business to some navigable stream, or to some existing railroad, turnpike or public highway.[20]

No person or persons to whom shares of stock in any company incorporated under the laws of this territory, have been or hereafter shall be transferred, or by whom such shares are held as security for money advanced thereon, or which are now or shall be held by any such person or persons as security for any indebtedness whatever, shall have the right to vote at any election, either general or special, called or held by any such incorporated company for any purpose whatever; but the absolute right to vote and represent all stock in any such incorporated company, transferred to or held by any person or persons as security for any money advanced thereon, or for any other indebtedness whatever, at any election held by any such company as aforesaid, shall belong to the person or persons who deposit or transfer such stock as security for any such indebtedness, and any vote cast by any person or persons holding shares of stock in any incorporated company as aforesaid, as security as hereinbefore described, shall be absolutely void and of no effect.[21]

All corporations organized under this chapter shall appoint a bona fide resident of this territory, who has been a resident of this territory for at least three years, its agent, upon whom all notices and processes, including service of summons may be served, and when so served shall be deemed taken and held to be lawful personal service on such corporation, and said notice shall be filed in the office of the secretary of the territory.[22]

[20] Ariz. Rev. Stats. 1901, par. 781, § 21.
[21] Ariz. Rev. Stats. 1901, par. 782, § 22.
[22] Ariz. Rev. Stats. 1901, par. 783, § 23. See Ariz. Rev. Stats. 1901, pp. 308, 309.

§ 679. Same. Fees to resident agent. There are no fees fixed by statute for the compensation of the resident agent. As a matter of course, the subject of compensation for the agent is one purely between the company and its representative, although there are pamphlets in circulation which would have their readers believe that there is a fee fixed for these agents by the laws of Arizona.

That whenever any corporation heretofore or hereafter organized or incorporated under any law of this territory shall either:

1. Fail to appoint a bona fide agent of this territory (who is and has been a resident of this territory for at least three years) its agent upon whom all notices and processes, including service of summons may be served, and when so served, shall be, and be deemed taken and held to be lawful personal service upon such corporation.

2. Or fail to file due notice of such appointment of such agent in the office of the auditor of the territory.

3. Or shall revoke or attempt to revoke such appointment of such an agent without duly appointing another in his place or whenever at any general or special meeting of the stockholders of any such corporation, the holders of the majority of its outstanding stock represented or voting at any such meeting shall have directed the disposal of all corporate assets, or that the corporation be dissolved, or that it cease to use or exercise its corporate franchises; or whenever the directors or officers or managing board, of any such corporation being thereto authorized or directed by a majority of the outstanding stock thereof represented or voting at any general or special meeting thereof, shall have disposed of all the corporate assets, or dissolved or attempted to dissolve or secure the dissolution of any corporation, or shall have done or attempted to do any of the aforesaid; or when any such corporation shall have disposed of all its property and assets; then and in or on each, every or any one of the foregoing cases, situations, provisions or conditions, either the attorney-general of the territory, or any resident thereof, or any such corporation, or any stockholder or officer of any such corporation may bring, prosecute or

maintain (either in the name of the attorney-general or in his own name) an action in any court of record of this territory to have and procure a judicial dissolution and disincorporation of all its rights, privileges and franchises; and whenever it is made to appear to any such court by petition or complaint of any of the aforesaid parties that any one of the above-named cases, provisions, or situations or conditions exists in respect to any such corporation, such court shall herewith order or cite such corporation to appear before it (and service of such order may be made upon the corporation either personally or upon the auditor of the territory as heretofore provided in paragraph 1324 of the Revised Statutes of Arizona for service upon the secretary of the territory) and if, upon hearing of trial it be made to appear that any one of said causes, conditions or situations, or provisions exists, such court shall thereupon dissolve and disincorporate such corporation and forfeit and annul each and every of its rights, privileges and franchises.[23]

Nothing in this act, however, shall authorize the dissolution of a corporation for any of the causes in this act stated, where it shall be made to appear to the court that such causes or conditions have been fraudulently procured for the purpose of defrauding either creditors or stockholders of such corporation.[24]

§ 680. **Same. Articles of incorporation, etc., to be filed. Duty of officers.** That hereafter all articles of incorporation, or certified copies thereof, of corporations organized under the laws of this territory and foreign corporations transacting business in this territory, and all appointments of statutory agents of such corporations, and all affidavits of the publication of articles of incorporation of such corporations now required to be filed or recorded in the office of the secretary of the territory shall be filed in the office of the territorial auditor and not in the office of the secretary of the territory, and all acts now required to be per-

[23] Ariz. Session Laws 1903, p. 134, § 1.
[24] Id., § 2.

formed by the secretary of the territory, relating to the organization of such corporations or the transacting by them of business in this territory, shall be performed by the territorial auditor.[25]

That the territorial auditor is hereby empowered, with the approval of the governor of the territory, to appoint such additional clerk or clerks in his office as may be necessary for the economical performance of the duties imposed by this act upon him, at a salary of not more than seventy-five dollars per month for each clerk, and the territorial auditor is hereby authorized and directed to draw his warrant upon the general fund of the territory for such salary or salaries, and the territorial treasurer is hereby authorized and directed to pay the same.[26]

The territorial auditor shall charge and collect in advance the following fees for performing the duties herein required of him:

Filing articles of incorporation	$10.00
Filing affidavit of publication of articles of incorporation	3.00
Filing appointment of statutory agent	3.00
For issuing certificate of filing of articles of incorporation	3.00
For copy of any document on file in his office not otherwise provided for, 20 cents per folio	.20
For affixing seal and certificate to copy	1.00

And the territorial auditor shall on the first Monday of each month deposit in the office of the territorial treasurer all fees so collected, accompanied by an itemized and verified statement of said fees, without cost to the territory, and such fees so deposited shall be placed in the general fund of the territory.[27]

That all books, papers, documents, records, files and filing-cases now in the office of the secretary of the territory in any way relating to the incorporation of companies under the laws of this territory, or foreign corporations transact-

[25] Ariz. Session Laws 1903, p. 46, § 1.
[26] Id., § 2.
[27] Id., § 3.

ing business in this territory, shall at once be delivered by the secretary of the territory to the territorial auditor.[28]

Any corporation organized under the laws of this territory may commence business as soon as its articles of incorporation are filed for record in the office of the county recorder of the county where its principle [principal] place of business is to be and a certified copy filed in the office of the territorial auditor and its acts shall then be valid if the publication of its articles of incorporation is made and an affidavit thereof filed in the office of the territorial auditor within three months from the date of the filing in the office of the county recorder of its articles of incorporation.[29]

All persons occupying territorial public office are prohibited from acting as the statutory or resident agent for any corporation herein mentioned.[30]

The certificate referred to is one to be placed by the county recorder upon the copy of the articles which is to be filed in the office of the territorial auditor.

§ 681. **Same. By-laws may provide for sale of shares upon failure to pay subscription.** Any corporation heretofore or hereafter organized under the laws of this territory may provide in its by-laws for the forfeiture and sale of its shares for failure to pay the subscription price of such shares or any part of such price according to the terms of the subscription or when called by the board of directors. No shares shall be forfeited and sold under this act except after notice published in some newspaper of the county where the articles of incorporation are filed at least once a week for four weeks before the sale, which notice shall state the name or names of the delinquent stockholders, and the number of shares delinquent and the time and place of the sale, which shall be by auction to the highest bidder. Similar notice shall be deposited in the post-office postage prepaid, and directed to the delinquent stockholder at his address as the same appears on the stock-book of the com-

[28] Ariz. Session Laws 1903, p. 48, § 4.
[29] Id., § 5.
[30] Id., § 6.

pany. The affidavit of the officer of the company who mailed such notice shall be prima facie evidence thereof. The amount realized from the sale, in excess of the amount due on the subscription or call, with interest at six per cent per annum from the time when the same become due, and the expense of the notice and sale, shall be paid to the stockholders whose shares were forfeited and sold.[31]

Sales made under the provisions of this act shall be sufficient to vest the shares so sold in the purchaser at the sale, and the corporation or one of its officers for its benefit may be a purchaser at such sale.[32]

Nothing herein shall be construed to authorize any corporation to levy any assessment on its shares or on the holders thereof after the original subscription price or par value of such shares shall have been paid.[33]

This act shall take effect and be in force from and after its passage.[34]

[31] Ariz. Session Laws 1907, p. 52, § 1.
[32] Id., § 2.
[33] Id., § 3.
[34] Id., § 4.

CHAPTER XI.

STATE AND TERRITORIAL STATUTES. CALIFORNIA.

Mining Laws.

§ 682. Mining. Rights of way. Proof of annual labor. Forfeiture for non-performance of work. Working. Easement. Drainage.
§ 683. Mining claims. Abandoned. Fencing or covering abandoned shafts.
§ 684. Mining-bell signals.
§ 685. Same. Rules for enforcing.
§ 686. Protection of workmen.

§ 682. Mining. Rights of way. Proof of annual labor. Forfeiture for non-performance of work. Working. Easement. Drainage. Whenever any mine-owner, company, or corporation shall have performed the labor and made the improvements required by law for the location and ownership of mining claims or lodes, such owner, company, or corporation shall file or cause to be filed, within thirty days after the time limited for performing such labor or making such improvements, with the county recorder of deeds of the county in which the mine or claim is situated, [an affidavit] particularly describing the labor performed and improvements made, and the value thereof, which affidavit shall be prima facie evidence of the facts therein stated. Upon the failure of any claimant or mine owner to comply with the conditions of this act in the performance of labor, or making of improvements upon any claim, mine, or mining ground, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made. But if, previous to relocation, the original locators, their heirs, assigns, or legal representatives, resume work upon such claim, and continue the same with reasonable diligence until the required amount of

labor has been performed or improvements made, and the required statement of accounts and affidavits filed with the county recorder, then the claim shall not be subject to relocation because of previous failure to file accounts. Upon the failure of any one of the several co-owners to contribute his portion of the expenditures required hereby, the co-owners who have performed the labor or made the improvement may, at the expiration of the year, give such delinquent co-owner personal notice, in writing, or by publication in the newspaper published nearest the claim, for at least once a week for ninety days; and if, at the expiration of ninety days after such notice in writing or publication, such delinquent shall fail or refuse to contribute his portion of the expenditures required by this section, his interest in the claim shall become the property of his co-owners who made the required expenditures. A copy of such notice, together with an affidavit showing personal service or publication, as the case may be, of such notice, when filed or recorded with the recorder of deeds of the county in which such mining claim is situated, shall be evidence of the acquisition of title of such co-owners. Where a person or company has or may run a tunnel or cuts for the purpose and in good faith for the purpose of developing a lode, lodes, or claims owned by said person, or company, or corporation, the money so expended in running said tunnel shall be taken and considered as expended on said lodes or claims; provided further, that said lode, claim, or claims shall be distinctly marked on the surface as provided by law.[1]

All mining locations and mining claims shall be subject to a reservation of the right of way through or over any mining claims, ditches, roads, canals, cuts, tunnels, and other easements for the purpose of working other mines; provided, that any damage occasioned thereby shall be assessed and paid for in the manner provided by law for land taken for public use under the right of eminent domain.[2]

[1] Cal. Stats. 1891, ch. 155, § 1, p. 219; **Henning's Gen. Laws, Cal.**, p. 724. See Harris v. Kellogg, 117 Cal. 484.

[2] Id., § 2.

§ 683. Mining claims. Abandoned. Fencing or covering abandoned shafts. To provide for the covering or fencing of abandoned mining-shafts, pits or excavations, the penalty, and also the penalty for removing or destroying the covering or fencing from same.

All abandoned mining-shafts, pits or other abandoned excavations dangerous to passers-by or live-stock shall be securely covered or fenced, and kept so, by the owners of the land or persons in charge of the same, on which such shafts, pits or other excavations are located. Any person or persons failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.[3]

All abandoned mining-shafts, pits or other excavations situated on unoccupied public lands may be securely covered or fenced by order of the board of supervisors of the county wherein the same is [are] situated, and it shall be the duty of the board of supervisors to keep the same securely fenced or covered whenever it appears to them, by proof submitted, that the same is [are] dangerous or unsafe to man or beast. The cost of said covering or fencing to be a county charge.[4]

Any person or persons maliciously removing or destroying any covering or fencing placed around or over any shaft, pit or other excavation, as hereinbefore provided, shall be deemed guilty of a misdemeanor.[5]

§ 684. Mining-bell signals. To establish a uniform system of mining-bell signals, to be used in all mines operated in the state of California, and for the protection of miners.

Every person, company, corporation, or individual, operating any mine within the state of California — gold, silver, copper, lead, coal, or any other metal or substance where it is necessary to use signals by means of bell or otherwise, for shafts, inclines, drifts, crosscuts, tunnels, and underground workings — shall, after the passage of this bill, adopt, use, and put in force the following system or code of mine-bell signals, as follows:

[3] Cal. Stats. 1903, ch. 232, p. 283, § 1; **Henning's Gen. Laws Cal., p. 726.**
[4] Id., § 2.
[5] Id., § 3.

1 bell, to hoist. (See rule 2.)
1 bell, to stop if in motion.
2 bells, to lower. (See rule 2.)
3 bells, man to be hoisted; run slow. (See rule 2.)
4 bells, start pump if not running, or stop pump if running.
1—3 bells, start or stop air-compressor.
5 bells, send down tools. (See rule 4.)
6 bells, send down timbers. (See rule 4.)
7 bells, accident; move bucket or cage by verbal orders only.
1—4 bells, foreman wanted.
2—1—1 bells, done hoisting until called.
2—1—2 bells, done hoisting for the day.
2—2—2 bells, change buckets from ore to water, or vice versa.
3—2—1 bells, ready to shoot in the shaft. (See rule 3.)
Engineer's signal, that he is ready to hoist, is to raise the bucket or cage two feet and lower it again. (See rule 3.)
Levels shall be designated and inserted in notice hereinafter mentioned. (See rule 5.) [6]

§ 685. **Same. Rules for enforcing.** For the purpose of enforcing and properly understanding the above code of signals, the following rules are hereby established:

Rule 1. In giving signals make strokes on bell at regular intervals. The bar (—) must take the same time as for one stroke of the bell, and no more. If timber, tools, the foreman, bucket, or cage, are wanted to stop at any level in the mine, signal, by number of strokes on the bell, the number of the level first before giving the signal for timber, tools, etc. Time between signals to be double bars (— —). Examples:

6— —5, would mean stop at sixth level with tools.

4— —1—1—1— —1, would mean stop at fourth level, man on, hoist.

2— —1—4, would mean stop at second level with foreman.

Rule 2. No person must get off or on the bucket or cage while the same is in motion. When men are to be hoisted,

[6] Cal. Stats. 1893, ch. 74, § 1, p. 82. Henning's Gen. Laws Cal., p. 722.

give the signal for men. Men must then get on bucket or cage, then give the signal to hoist. Bell-cord must be in reach of man on the bucket or cage at stations.

Rule 3. After signal "Ready to shoot in shaft," engineer must give his signal when he is ready to hoist. Miners must then give the signal of "Men to be hoisted," then "spit fuse," get into the bucket, and give the signal to hoist.

Rule 4. All timbers, tools, etc., "longer than the depth of the bucket," to be hoisted or lowered, must be securely lashed at the upper end to the cable. Miners must know they will ride up or down the shaft without catching on rocks or timbers and be thrown out.

Rule 5. The foreman will see that one printed sheet of these signals and rules for each level and one for the engine-room are attached to a board not less than twelve inches wide by thirty-six inches long, and securely fasten the board up where signals can be easily read at the places above stated.

Rule 6. The above signals and rules must be obeyed. Any violation will be sufficient grounds for discharging the party or parties so doing. No person, company, corporation, or individuals operating any mine within the state of California, shall be responsible for accidents that may happen to men disobeying the above rules and signals. Said notice and rules shall be signed by the person or superintendent having charge of the mine, who shall designate the name of the corporation or the owner of the mine.

Any person or company failing to carry out any of the provisions of this act shall be responsible for all damages arising to or incurred by any person working in said mine during the time of such failure.[7]

§ 686. **Protection of workmen.** It shall not be lawful for any corporation, association, owner, or owners of any quartz-mining claims within the state of California, where such corporation, association, owner, or owners employ twelve men daily, to sink down into such mine or mines any perpendicular shaft or incline beyond a depth from the sur-

[7] Cal. Stats. 1893, ch. 74, § 2, p. 83; **Henning's Gen. Laws Cal.**, p. 722.

face of three hundred feet without providing a second mode of egress from such mine, by shaft or tunnel, to connect with the main shaft at a depth of not less than one hundred feet from the surface.[8]

It shall be the duty of each corporation, association, owner, or owners of any quartz mine or mines in this state, where it becomes necessary to work such mines beyond the depth of three hundred feet, and where the number of men employed therein daily shall be twelve or more, to proceed to sink another shaft or construct a tunnel so as to connect with the main working-shaft of such mine as a mode of escape from underground accident, or otherwise. And all corporations, associations, owner, or owners of mines as aforesaid, working at a greater depth than three hundred feet, not having any other mode of egress than from the main shaft, shall proceed as herein provided.[9]

When any corporation, association, owner, or owners of any quartz-mine in this state shall fail to provide for the proper egress as herein contemplated, and where any accident shall occur, or any miner working therein shall be hurt or injured, and from such injury might have escaped if the second mode of egress had existed, such corporation, association, owner, or owners of the mine where the injuries shall have occurred shall be liable to the person injured in all damages that may accrue by reason thereof; and an action at law in a court of competent jurisdiction may be maintained against the owner or owners of such mine, which owners shall be jointly or severally liable for such damages. And where death shall ensue from injuries received from any negligence on the part of the owners thereof, by reason of their failure to comply with any of the provisions of this act, the heirs or relatives surviving the deceased may commence an action for the recovery of such damages as provided by an act entitled an act requiring compensation for causing death by wrongful act, neglect, or default, approved April twenty-sixth, eighteen hundred and sixty-two.[10]

[8] Cal. Stats. 1871-72, ch. 205, § 1, p. 413; **Henning's Gen. Laws Cal.**, p. 724.

[9] Id., § 2.

[10] Id., § 3.

CHAPTER XII.

STATE AND TERRITORIAL STATUTES. CALIFORNIA (CONTINUED).

General Corporation Laws.

§ 687. What articles must contain. And how executed.
§ 688. Subscription to articles.
§ 689. Where filed and recorded. Domestic corporations.
§ 690. Fees of secretary of state.
§ 691. By-laws.
§ 692. Filing articles in other counties.
§ 693. Directors.
§ 694. Elections by ballot. Cumulative voting.
§ 695. Foreign corporations must pay same fees as domestic.
§ 696. Foreign corporations must designate agent.
§ 697. Same. Must file certified copy of articles.
§ 698. Same. Penalty for failure to file.
§ 699. Certificates of stock. How issued.
§ 700. Mining corporations. Protection of stockholders.
§ 701. Transfer agencies. May establish in other states.
§ 702. Stock issued at transfer agencies. Surrender of certificate of stock.
§ 703. Consolidation of mining corporations. Written consent of stockholders.
§ 704. Same. Certificate of consolidation. Filed where.
§ 705. Same. To be signed by boards. Calling meeting of stockholders. Notice.
§ 706. Books and balance-sheets to be kept by secretary. Stockholders' right to inspect.
§ 707. Stockholder may examine mining property.
§ 708. Monthly balance-sheet. Verified by oath of whom.
§ 709. Superintendent to file monthly account. What account must show.
§ 710. Same. Report attached to account. Open to inspection.
§ 711. Right to inspect books and records. Absolute right.
§ 712. Reason or occasion for examination.
§ 713. Right of stockholder to visit mine with expert. Duty of superintendent.
§ 714. Failure of superintendent to obey orders. Removal.
§ 715. Liability of president and directors. Refusal to permit examination. Damages.

§ 716. Removal of directors.
§ 717. Must pay annual license tax.
§ 718. License tax for part of year.

§ 687. What articles must contain. And how executed. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist, not exceeding fifty years.
5. The number of its directors or trustees, which shall not be less than three, and the names and residences of those who are appointed for the first year.
6. The amount of its capital stock, and the number of shares into which it is divided. Corporations formed for profit, pursuant to the provisions of this code, may, by their articles of incorporation, provide for the classification of their capital stock into preferred and common stock. In the event that the articles of incorporation shall provide for such classification the same must contain a statement of the number of shares of stock to which preference is granted, and the number of shares of stock to which no preference is granted. The articles of incorporation shall also state, in clear and succinct manner, the nature and extent of the preference granted, and except as to the matters and things so stated, no distinction shall exist between said classes of stock or the owners thereof; provided, however, that no preference shall be granted nor shall any distinction be made between the classes of stock either as to voting power or as to the statutory or constitutional liability of the holders thereof to the creditors of the corporation.
7. If there is a capital stock, the amount actually subscribed, and by whom.[1]

[1] **Kerr's Cyc. Civ. Code Cal.**, § 290, as amended by act March 18, 1907, Stats. 1907, p. 347, **Kerr's Stats. and Amdts. 1907**, p. 401.

Note. The volumes of **Kerr's Cyclopedic Codes of California**, cited in this chapter, are so fully annotated as to furnish a complete treatise on corporations, and leaves nothing further to be desired.

§ 688. **Subscription to articles.** The articles of incorporation must be subscribed by three or more persons, a majority of whom must be residents of this state [California], and acknowledged by each before some officer authorized to take and certify acknowledgments or [of] conveyances of real property.[2]

§ 689. **Where filed and recorded. Domestic corporations.** The articles of incorporation must be filed in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk must be filed with the secretary of state. Upon the filing of this certified copy, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a certified copy of the articles have been filed in his office. Thereupon the parties signing the articles shall be a body politic incorporated by the name stated in the certificate, for the term of fifty years, unless it is, in the articles of incorporation, otherwise stated.

The secretary of state shall not file a copy of any articles or issue a certificate where the articles set forth a name so closely resembling the name of a corporation already on file in his office "as will tend to deceive."[3]

§ 690. **Fees of secretary of state.** The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, twenty cents per folio.

2. For comparing a copy of any law, resolution, record, or other document or paper with the original, or the certified copy of the original, on file in his office, five cents per folio.

3. For affixing certificate and seal of state, unless otherwise provided for, two dollars.

4. For filing articles of incorporation, if the capital stock amounts to twenty-five thousand dollars or less, fifteen

[2] Kerr's Cyc. Civ. Code Cal., § 292, as amended March 20, 1905, Stats. and Amdts. 1905, p. 502.

dollars; if the capital stock amounts to over twenty-five thousand dollars, and not over seventy-five thousand dollars, twenty-five dollars; if the capital stock amounts to over seventy-five thousand dollars, and not over two hundred thousand dollars, fifty dollars; if the capital stock amounts to over two hundred thousand dollars, and not over five hundred thousand dollars, seventy-five dollars; if the capital stock is over five hundred thousand dollars, and not over one million dollars, one hundred dollars; if the capital stock is over one million dollars, fifty dollars additional for every five hundred thousand dollars or fraction thereof of capital stock over and above one million dollars; for filing articles of incorporation without capital stock, except co-operative associations, five dollars; for filing articles of incorporation of co-operative associations, formed under the act of eighteen hundred and ninety-five, and acts supplementary thereto or amendatory thereof, fifteen dollars.

5. For recording articles of incorporation, twenty cents per folio.

6. For issuing certificate of incorporation, three dollars.

7. For filing certificate of increase of capital stock, five dollars for every fifty thousand dollars or fraction thereof of such increase.

8. For filing certificate of decrease of capital stock, five dollars.

20. For filing notice of appointment of agent, five dollars.[4]

§ 691. **By-laws.** Any corporation formed under the laws of California must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the constitution and laws of this state. If adopted at a meeting of the stockholders, to each, a notice must be given of such meeting in some newspaper published in the county in which the principal place of business of the company is located.

[4] **Kerr's Cyc. Pol. Code Cal.,** § 416, as amended by act March 19, 1907, Stats. and Amdts. 1907, pp. 352, 353; **Kerr's Stats. and Amdts. 1907,** pp. 22, 23.

But the written assent of the holders of two-thirds of the stock shall be effectual to adopt such by-laws without a meeting.[5]

§ 692. **Filing articles in other counties.** No corporation must purchase, locate or hold property, in any county in this state, other than the county in which its original articles of incorporation are filed, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. . . . Any corporation failing to comply with the provisions of this section cannot maintain or defend any action or proceeding in relation to such property.[6]

§ 693. **Directors.** Directors must be elected annually by the stockholders.[7]

§ 694. **Elections by ballot. Cumulative voting.** Elections must be by ballot. Stockholder can vote in person or by proxy according to the number of shares standing in his name. Cumulative voting is permitted.[8]

At all elections or votes had for any purpose in corporations formed for profit there must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy in writing; provided, that in all instances of corporations formed for purposes other than profit the by-laws shall provide the number of members or stockholders that shall constitute a quorum for the transaction of business. Every person acting therein, in person or by proxy or representative, must be a member thereof or a stockholder, having stock in his own name on the stock-books of the corporation at least ten days prior to the elec-

[5] Kerr's Cyc. Civ. Code Cal., § 301.
[6] Kerr's Cyc. Civ. Code Cal., § 299[a], being amendments of March 21, 1905, Stats. and Amdts. 1905, p. 556.
[7] Kerr's Cyc. Civ. Code Cal., § 302.
[8] Kerr's Cyc. Civ. Code Cal., § 307.

tion. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent or any stockholders or members, and may be set aside by petition to the superior court of the county where the same is held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.[9]

§ 695. **Foreign corporations must pay same fees as domestic.** Foreign corporations must pay the same fee as domestic corporations for filing and having certified articles of incorporation, etc.[10]

§ 696. **Foreign corporations must designate agent.** Every corporation other than those created by or under the laws of this state must, at the time of filing the certified copy of its articles of incorporation, file in the office of the secretary of state a designation of some person residing within the state upon whom process issued by authority of or under any law of this state may be served. A copy of such designation, duly certified by the secretary of state, is sufficient evidence of such appointment. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such corporation.[11]

§ 697. **Same. Must file certified copy of articles.** Every corporation organized under the laws of another state, territory, or of a foreign country, which is now doing business in this state, or is maintaining an office herein, or which shall hereafter do business in this state or maintain an office

[9] **Kerr's Cyc. Civ. Code Cal.,** § 312, as amended March 18, 1907, Stats and Amdts. 1907, p. 596; **Kerr's Stats. and Amdts. 1907,** p. 103.

[10] **Kerr's Cyc. Civ. Code Cal.,** § 409, being act March 21, 1905, Stats and Amdts. 1905, p. 631.

[11] **Kerr's Cyc. Civ. Code Cal.,** § 405, as amended by act March 18, 1907, Stats. and Amdts. 1907, pp. 558, 559, **Kerr's Stats. and Amdts. 1907,** p. 410.

herein, or which shall enter this state for the purpose of doing business herein, must file in the office of the secretary of state of the state of California a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by charter, or statute, or legislative, or executive, or governmental act, duly certified by the secretary of state, or other officer authorized by the law of the jurisdiction under which such corporation is formed to certify such copy, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business is located, and also where such corporation owns property.[12]

§ 698. **Same. Penalty for failure to file.** Foreign corporations who fail to comply with the conditions mentioned in sections 408 and 409, Civil Code, are liable to fine of five hundred dollars and are prohibited from maintaining any suit in any court of the state of California.[13]

§ 699. **Certificates of stock. How issued.** All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to full payment, under such restrictions and for such purposes as their by-laws may provide, but any certificate issued prior to full payment must show on its face what amount has been paid thereon.[14]

No corporation shall issue stocks or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness is void.[15]

[12] **Kerr's Cyc. Civ. Code Cal.,** § 408, as amended by act March 18, 1907, Stats. and Amdts. 1907, p. 559, **Kerr's Stats. and Amdts. 1907,** p. 411.

[13] **Kerr's Cyc. Civ. Code Cal.,** § 410.

[14] **Kerr's Cyc. Civ. Code Cal.,** § 323, as amended by act March 18, 1907, Stats. and Amdts. 1907, p. 348, **Kerr's Stats. and Amdts. 1907,** p. 403.

[15] **Kerr's Cyc. Civ. Code Cal.,** § 359, as amended by act March 18, 1907, Stats. and Amdts. 1907, pp. 349-352, **Kerr's Stats. and Amdts. 1907,** pp. 405-408.

§ 700. Mining corporations. Protection of stockholders. The following acts, passed by the California legislature at its session in 1905, no doubt contain several things of benefit to stockholders in mining companies, but we think they contain provisions imposing needless and unnecessary restrictions upon the directors and officers of this class of corporations.

§ 701. Transfer agencies. May establish in other states. Any corporation organized in this state for the purpose of mining or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation.[16]

§ 702. Stock issued at transfer agencies. Surrender of certificate. All stock of any such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancelation.[17]

§ 703. Consolidation of mining corporations. Written consent of stockholders. It is lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon

[16] Kerr's Cyc. Civ. Code Cal., § 586.
[17] Kerr's Cyc. Civ. Code Cal., § 587.

such terms as may be agreed upon by the respective boards of directors or trustees of such corporations so desiring to consolidate their interests;[18] but

No such consolidation must take place without the written consent of the stockholders representing two thirds of the capital stock of each corporation, and no such consolidation can, in any way, relieve such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation,[19]

Due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county where the said mining property is situated, if there is one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporation is.[20]

§ 704. **Same. Certificate of consolidation. Filed where.** And when the consolidation is completed, a certificate thereof, containing the manner and terms of such consolidation, must be filed in the office of the county clerk of the county in which the original certificate of incorporation of each of said corporations is filed, and a copy thereof must be filed in the office of the secretary of state.[21]

§ 705. **Same. To be signed by boards. Calling meeting of stockholders. Notice.** Such certificate must be signed by a majority of each board of trustees or directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of trustees or directors for the consolidated corporation, for the year thence next ensuing; and to cause notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least ten

[18] Kerr's Cyc. Civ. Code Cal., § 587a.
[19] Id.
[20] Id.
[21] Id.

days before the time fixed for such meeting. The said certificate must also contain all the requirements prescribed by section two hundred and ninety.[22]

§ 706. **Books and balance-sheets to be kept by secretary. Stockholders' right to inspect.** It is the duty of the secretary of every corporation formed for the purpose of mining, or conducting mining in California, whether such corporation be formed and organized under the laws of the state of California or of any other state, territory, or foreign country, to keep at some place within the state of California an office and in such office to keep a complete set of books showing all receipts and expenditures of such corporation, the sources of such receipts, and the objects of such expenditures, and also all transfers of stock. All books and papers must, at all times during business hours, be open to the inspection of any stockholder. He is entitled to be accompanied by an expert, and to make copies or extracts from any such books or papers.[23]

§ 707. **Stockholder may examine mining property.** He may, at reasonable hours, examine such mining property, accompanied by an expert, take samples, and make such other examination as he may deem necessary.[24]

§ 708. **Monthly balance-sheet. Verified by oath of whom.** It is the duty of the directors, on the second Monday of each and every month, to cause to be made an itemized account or balance-sheet for the previous month, embracing a full and complete statement of all disbursements and receipts, showing from what sources such receipts were derived, and to whom and for what object or purpose such disbursements or payments were made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance-sheet must be veri-

[22] Kerr's Cyc. Civ. Code Cal., § 587a.
[23] Kerr's Cyc. Civ. Code Cal., § 588.
[24] Id.

fied under oath by the president and secretary, and posted in some conspicuous place in the office of the company.[25]

§ 709. **Superintendent to file monthly account. What must show.** It is the duty of the superintendent, on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. Such account must also contain a verified statement showing the number of men employed under him, and for what purpose, and the rate of wages paid to each.[26]

§ 710. **Same. Report attached to account. Open to inspection.** He must attach to such account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It is his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports, and correspondence from the superintendent must be kept in some conspicuous place in the office of said company, open to the inspection of all stockholders.[27]

§ 711. **Right to inspect books and records. Absolute right.** Stockholder has absolute right, at all reasonable hours, to inspect records showing financial condition of corporation.[28]

[25] **Kerr's Cyc. Civ. Code Cal.,** § 588.

[26] Id.

[27] Id.

[28] Johnson v. Langdon, 135 Cal. 624, 87 Am. St. Rep. 156, 67 Pac. Rep. 1050. See also Foster v. White, 86 Ala. 467, 6 So. Rep. 88; Ellsworth v. Dorwart, 95 Iowa, 108, 58 Am. St. Rep. 427, 63 N. W. Rep. 588 (decided under Iowa Code, §§ 1078, 1279). See Ranger v. Champion Cotton-Press Co., 51 Fed. Rep. 61, 62.

§ 712. **Reason or occasion for examination.** Under statute giving stockholders right to examine books at reasonable and proper times,[29] stockholder is not required to show any reason or occasion rendering examination opportune and proper, or definite and legitimate purpose. The custodian of books or papers cannot inquire into his motives and purposes. The only express limitation is that right shall be exercised at reasonable and proper times.[30]

§ 713. **Right of stockholder to visit mine with expert. Duty of superintendent.** Any stockholder of a corporation formed under the laws of this state for the purpose of mining, is entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit; and when such stockholder applies to the president of such corporation, he must immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said mine or mines as the party named in said order may desire to visit and examine.[31]

It is the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full and complete inspection of said mine or mines, and of the workings therein, and to accompany said stockholder either in person, or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof.[32]

§ 714. **Failure of superintendent to obey orders. Removal.** If the superintendent fails to obey such order, such

[29] **Kerr's Cyc. Civ. Code Cal.,** § 377.

[30] Johnson v. Langdon, 135 Cal. 624, 87 Am. St. Rep. 156, 67 Pac. Rep. 1050 (holding mandamus to be the proper remedy on refusal of the custodian to show the books); Foster v. White, 86 Ala. 467, 6 So. Rep. 88. Any officer of a corporation having custody of the records thereof, and refusing to exhibit them to an officer or stockholder, is guilty of a misdemeanor: **Kerr's Cyc. Pen. Code Cal.,** § 565.

[31] **Kerr's Cyc. Civ. Code Cal.,** § 589.

[32] Id.

stockholder is entitled to recover, in any court of competent jurisdiction, against the corporation, the sum of one thousand dollars, and traveling expenses to and from the mine, as liquidated damages, together with costs of suit. In case of such refusal, it is the duty of the directors of the corporation forthwith to remove the officer so refusing, and thereafter he must not be employed directly or indirectly by the corporation, nor must any salary be paid to him.[33]

§ 715. **Liability of president and directors. Refusal to permit examination. Damages.** In case of the refusal or neglect of the president to cause to be issued by the secretary the order mentioned in section five hundred and eighty-nine, such stockholder is entitled to recover against said president the sum of one thousand dollars and costs, as provided in the last section.[34]

If the directors fail to have the reports and accounts current made and posted as provided in section five hundred and eighty-eight, they are liable, either severally or jointly, to an action by any stockholder complaining thereof, and on proof of such refusal or failure, he may recover judgment for actual damages sustained by him, with costs of suit.[35]

§ 716. **Removal of directors.** Each of such defaulting directors is also liable to removal for such neglect.[36]

§ 717. **Must pay annual license tax.** It shall be the duty of every corporation incorporated under the laws of this state, and of every foreign corporation now doing business, or which shall hereafter engage in business in this state, to procure annually from the secretary of state a license author-

[33] **Kerr's Cyc. Civ. Code Cal.,** § 589.
[34] **Kerr's Cyc. Civ. Code Cal.,** § 590.
[35] Id.
[36] Id. The original Title XI, embracing §§ 584-587, and each and every section thereof, was repealed March 21, 1905, and a new Title XI substituted therefor, embracing §§ 586-590, Stats. and Amdts. 1905, ch. 182, pp. 584-587, and is substantially the codification of act 1880 (Stats. 1880, p. 134) as amended by act 1897, Stats. and Amdts. 1905, pp. 584-587; **Kerr's Cyc. Civ. Code Cal.,** pp. 544-550.

izing the transaction of such business in this state, and shall pay therefor a license tax as follows:

When the authorized capital stock of the corporation does not exceed ten thousand dollars ($10,000) the tax shall be ten dollars ($10.00); when the authorized capital stock exceeds ten thousand dollars ($10,000) but does not exceed twenty thousand dollars ($20,000) the tax shall be fifteen dollars ($15.00); when the authorized capital stock exceeds twenty thousand dollars ($20,000) but does not exceed fifty thousand dollars ($50,000) the tax shall be twenty dollars ($20.00); when the authorized capital stock exceeds fifty thousand dollars ($50,000) but does not exceed one hundred thousand dollars ($100,000) the tax shall be twenty-five dollars ($25.00); when the authorized capital stock exceeds one hundred thousand dollars ($100,000) but does not exceed two hundred and fifty thousand dollars ($250,000) the tax shall be fifty dollars ($50.00); when the authorized capital stock exceeds two hundred and fifty thousand dollars ($250,000) but does not exceed five hundred thousand dollars ($500,000) the tax shall be seventy-five dollars ($75.00); when the authorized capital stock exceeds five hundred thousand dollars ($500,000) but does not exceed two million dollars ($2,000,000) the tax shall be one hundred dollars ($100.00); when the authorized capital stock exceeds two million dollars ($2,000,000) but does not exceed five million dollars ($5,000,000) the tax shall be two hundred dollars ($200.00); when the authorized capital stock exceeds five million dollars ($5,000,000) the tax shall be two hundred and fifty dollars ($250.00).

Said license tax or fee shall be due and payable on the first day of July of each and every year to the secretary of state, who shall pay the same into the state treasury. If not paid on or before the hour of four o'clock p. m. of the first day of September next thereafter, the same shall become delinquent and there shall be added thereto, as a penalty for such delinquency, the sum of ten dollars.

The license tax or fee hereby provided authorizes the corporation to transact its business during the year or for any fractional part of such year in which such license tax or

fee is paid. "Year," within the meaning of this act, means from and including the first day of July to and including the thirtieth day of June next thereafter.[37]

§ 718. **License tax for part of year.** At the time of filing a certified copy of articles of incorporation of any corporation when filed on or between the first day of July and the following first day of December in any year, there shall be paid, in addition to all other fees required by law to be paid to secretary of state, the sum of twenty dollars, which shall be received and license receipt issued in full of the license tax payable under this act, for the then current year.[38]

[37] Act March 19, 1907, Stats. and Amdts. 1907, pp. 664, 665; **Kerr's Stats. and Amdts. 1907,** pp. 616, 617.

[38] Extra Session 1906, p. 25, § 10b; **Kerr's Stats. and Amdts. 1907,** p. 619.

CHAPTER XIII.

STATE AND TERRITORIAL STATUTES. COLORADO.

§ 719. Posting notice of location of placer claim.
§ 720. Marking boundaries of placer claim.
§ 721. Recording location-certificate of placer claim. Time for recording.
§ 722. What location-certificate of placer claim must state.
§ 723. Right of way for water to lode claim.
§ 724. Tunnel claim must be recorded. What recorded claim must show.
§ 725. Tunnel claims. Two hundred and fifty feet on each side. Right of way.
§ 726. May tunnel through claims.
§ 727. Purpose of tunnel. Inspection.
§ 728. Ore extracted property of owners. Damages.
§ 729. Burden of proof.
§ 730. Lode claims. Lodes crossing or uniting. Rights of parties.
§ 731. Same. Length of.
§ 732. Same. Width of. Exceptions.
§ 733. Same. Three months allowed in which to record location-certificate.
§ 734. Same. What location-certificate shall contain.
§ 735. Same. Location-certificate void when.
§ 736. Same. Manner of location. Discovery-shaft.
§ 737. Same. Manner of locating. Posting notice of location.
§ 738. Same. Marking boundaries.
§ 739. Same. Manner of marking boundaries.
§ 740. Same. Open crosscut, tunnel, or adit will hold lode.
§ 741. Same. Sixty days allowed to sink discovery-shaft.
§ 742. Same. What location includes. Apex. End lines. Side lines.
§ 743. Same. Apex cannot follow trend beyond exterior lines.
§ 744. Same. Right of way for ditch, flume, etc., for mining purposes. Parol license.
§ 745. Affidavit of annual labor.
§ 746. Form of affidavit of annual labor.
§ 747. Amendatory or additional certificate.
§ 748. Relocation of abandoned lode.
§ 749. Certificate of location shall contain but one location.

§ 750. Actions involving title or right of possession to mining claim. Survey by order of court, and the proceedings therefor.
§ 751. Value of ore, and damages.
§ 752. Partition of mining claims.

§ 719. **Posting notice of location of placer claim.** Before filing a location-certificate the discoverer or locator shall locate his claim by posting upon the claim a plain sign or notice containing

[1] the name of the claim;
[2] the name of the locator;
[3] the date of discovery, and
[4] the number of acres or feet claimed.[1]

§ 720. **Marking boundaries of placer claim.** Before filing his location-certificate the locator or discoverer shall mark the surface boundaries with substantial posts, and sunk into the ground, to wit: one at each angle of the claim.[2]

§ 721. **Recording location-certificate of placer claim. Time.** The discoverer of a placer claim shall, within thirty days from the date of discovery, record his claim in the office of the recorder of the county in which the claim is situate, by a location-certificate.[3]

§ 722. **What location-certificate of placer claim must state.** A location-certificate of a placer claim required to be filed in the county recorder's office shall state:

[1] The name of the claim, designating it as a placer claim;
[2] the name of the locator;
[3] the date of location;
[4] the number of acres or feet claimed, and
[5] a description of the claim, by such reference to natural objects or permanent monuments as shall identify the claim.[4]

[1] Mills's Ann. Stats. Colo., § 3136.
[2] Id.
[3] Id.
[4] Id.

§ 723. **Right of way for water to lode claim.** Whenever any person or persons are engaged in bringing water into any portion of the mines they shall have the right of way secured to them, and may pass over any claim, road, ditch, or other structure; provided, the water be guarded so as not to interfere with prior rights.[5]

§ 724. **Tunnel claim must be recorded. What record must show.** If any person or persons shall locate a tunnel claim for the purpose of discovery, he shall record the same, specifying the place of commencement and termination thereof, with the names of the parties interested therein.[6]

§ 725. **Tunnel claims. Two hundred and fifty feet on each side. Right of way.** Any person or persons engaged in working a tunnel, as provided by the Colorado statute, is entitled to two hundred and fifty feet each way from the tunnel, on each lode so discovered; provided, they do not interfere with any vested rights. If it shall appear that claims have been staked off and recorded prior to the record of the tunnel, on the line thereof, so that the required number of feet cannot be taken near the tunnel, they may be taken upon any part thereof where the same may be found vacant.[7]

§ 726. **May tunnel through claims.** Any person or company who has or hereafter may have a tunnel or cross-cut, the mouth of which is located upon his own ground or upon ground in his lawful occupation, shall have the right to drive and continue the same through and across any located or patented claim in front of the mouth of such tunnel, but not to follow or drive upon any vein belonging to the owner of such claim.[8]

[5] Mills's Ann. Stats. Colo., § 3138.

Right of way for ditches, flumes, etc. For statute providing for right of way for ditch, flume, etc., for lode claims, see Mills's Ann. Stats. Colo., § 3158.

[6] Mills's Ann. Stats. Colo., § 313.

[7] Mills's Ann. Stats. Colo., § 3140.

[8] Mills's Ann. Stats. Colo., § 3141.

[8] 3 Mills's Ann. Stats. Colo. (Rev. Sup. 1905), § 3141a.

§ 727. **Purpose of tunnel. Inspection.** Such tunnel or crosscut may be driven and worked for the purpose of drainage and for the purpose of reaching and working mining-ground of the tunnel-owner beyond the intersected claim. The owner or owners of any vein or any claim or claims so intersected or his duly authorized agent shall have the right to enter such tunnel upon application to the owner or owners of said tunnel without resorting to any process of law for the purpose of making a survey and inspecting such vein or veins as may be crossed within the boundary lines of such intersected claim, and if the owner or owners of such tunnel shall, by bulkheading, damming back or in any manner prevent the inspection or survey herein provided for, or if such owner or owners shall in any manner prevent the natural drainage of water from such intersected claim or claims without the consent of the owner or owners thereof, it shall work a forfeiture of all rights granted under section one of this act.[9]

§ 728. **Ore extracted property of owners. Damages.** If any ore, the property of the owner of the claim intersected or crossed, be extracted in driving such tunnel, it shall be the property of the owner of the vein from which it was taken and the owner of the tunnel shall be liable for all actual damages or injury done to the owner of the claim crossed by his tunnel.[10]

§ 729. **Burden of proof.** In all actions between the tunnel-owner and others involving the right to any vein discovered in such tunnel the burden of proving that the vein so discovered is not the property of the adverse claimant in such action shall be on the tunnel-owner.[11]

§ 730. **Lode claims. Lodes crossing or uniting. Rights of parties.** When it shall appear that one lode crosses, runs into or unites with any other lode, the priority of record

[9] 3 Mills's Ann. Stats. Colo. (Rev. Sup. 1905), § 3141b.
[10] Id., § 3141c.
[11] Id., § 3141d.

shall determine the rights of the claimants; provided, that in no case where it appears that two lodes have crossed one another, shall the priority of record give any person the privilege of turning off from the crevice or lode which continues in the same direction of the main lode upon which he may have recorded his claim, but he shall, at all times, follow the crevice running nearest in the general direction of the main lode upon which he may have recorded his claim.[12]

§ 731. **Same. Length of.** The length of any lode claim hereafter located may equal but not exceed fifteen hundred feet along the vein.[13]

§ 732. **Same. Width of. Exceptions.** The width of lode claims located after 1874 in Gilpin, Clear Creek, Boulder and Summit counties, shall be seventy-five feet on each side of the center of the vein or crevice; and in all other counties the width of the claim shall be one hundred and fifty feet on each side of the center of the vein or crevice: provided, that any county may, at any general election, determine upon a greater width not exceeding three hundred feet on each side of the center of the vein or lode, by a majority of the legal votes cast at said election, and any county by such vote at such election may determine upon a less width than above specified.[14]

§ 733. **Same. Three months allowed to record location-certificate.** The discoverer of a lode claim shall, within three months from the date of discovery, record his claim in the office of the recorder of the county in which such lode is situate, by a location-certificate which shall contain:[15]

§ 734. **Same. What location-certificate shall contain.**

(1.) The name of the lode;

(2.) The name of the locator;

(3.) The date of the location;

[12] Mills's Ann. Stats. Colo., § 3142.
[13] Mills's Ann. Stats. Colo., § 3148, first enacted in 1874.
[14] Mills's Ann. Stats. Colo., § 3149, first enacted in 1874.
[15] Mills's Ann. Stats. Colo., § 3150.

(4.) The number of feet in length claimed on each side of the center of discovery-shaft;

(5.) The general course of the lode as near as may be.[16]

§ 735. Same. **Location-certificate void when.** Any location-certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of linear feet claimed on each side of the discovery-shaft, the general course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void.[17]

§ 736. **Same. Manner of location. Discovery-shaft.** Before filing such location-certificate the discoverer shall sink a discovery-shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary, to show a well-defined crevice.[18]

§ 737. **Same. Manner of locating. Posting notice of location.** Before filing a location-certificate, the locator shall post at the point of discovery on the surface a plain sign or notice, containing the name of the lode, the name of the locator, and the date of discovery.[19]

§ 738. **Same. Marking boundaries.** Before filing a location-certificate, the discoverer shall mark the surface boundaries of the claim.[20]

§ 739. **Same. Manner of marking boundaries.** The surface boundaries of a lode claim shall be marked by six substantial posts hewed or marked on the side or sides which are in toward the claim, and sunk in the ground, to wit, one at each corner and one at the center of each side line. Where it is practically impossible on account of bed-rock to

[16] Mills's Ann. Stats. Colo., § 3150.
[17] Mills's Ann. Stats. Colo., § 3151.
[18] Mills's Ann. Stats. Colo., § 3152.
[19] Id.
[20] Id.

sink such posts, they may be placed in a pile of stones, and where in marking the surface boundaries of a claim any one or more of such posts shall fall by right upon precipitous ground, where the proper placing of it is impracticable or dangerous to life or limb, it shall be legal and valid to place any such posts at the nearest practicable point, suitably marked to designate the proper place.[21]

§ 740. **Same. Open crosscut, tunnel, or adit will hold lode.** Any open cut, crosscut or tunnel which shall cut a lode at the depth of ten feet below the surface, shall hold such lode, the same as if a discovery-shaft were sunk thereon, or an adit of at least ten feet in along the lode from the point where the lode may be in any manner discovered, shall be equivalent to a discovery-shaft.[22]

§ 741. **Same. Sixty days allowed to sink discovery-shaft.** The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery-shaft thereon.[23]

§ 742. **Same. What location includes. Apex. End lines. Side lines.** The location or location-certificate of any lode claim shall be construed to include all surface-ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended downward, vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.[24]

§ 743. **Same. Apex cannot follow trend beyond exterior lines.** If the top or apex of a lode in its longitudinal course extends beyond the exterior lines of the claim at any

[21] Mills's Ann. Stats. Colo., § 3153.
[22] Mills's Ann. Stats. Colo., § 3154.
[23] Mills's Ann. Stats. Colo., § 3155.
[24] Mills's Ann. Stats. Colo., § 3156.

point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior lines.[25]

§ 744. **Same. Right of way for ditch, flume, etc. Parol license.** All mining claims now located or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway or pack-trail, whether now in use or which may be hereafter laid out across such location; provided, always, that such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway or pack-trail, without the consent of the owner, except by condemnation, as in case of land taken for public highways. Parol consent to the location of any easement accompanied by the completion of the same over the claim shall be sufficient without writings; and provided further, that such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.[26]

§ 745. **Affidavit of annual labor.** Within six months after any set time or annual period allowed for the performance

[25] Mills's Ann. Stats. Colo., § 3157.

[26] Mills's Ann. Stats. Colo., § 3158.

In so far as this section is inconsistent with the constitution (Art. II, §§ 14, 15), it is repealed; and where it authorizes the taking of private property for the purpose of constructing a tramway, it is limited by this constitutional provision: People v. District Court, 11 Colo. 147, 155. It was argued in this case that the logical result of denying the right to condemn and appropriate private property for a tramway was to prevent the great majority of miners from marketing their ores, since they could not get them to market without trespassing upon the claims of their neighbors. The court, in refusing sanction to this contention, said: "The argument is based on the assumption that, if the right of way across mining locations cannot be appropriated for private tramways for transporting ores, no right of way for hauling the ores from the mines in any manner exists under the laws. No such result necessarily or logically follows. The constitution recognizes the right to appropriate private property for private ways of necessity, but not for the construction upon or over it of private railroads." But see Tanner v. Treasury T. & R. Co. (Colo., 1906), 83 Pac. Rep. 464, discussed ante, pp. 297, 298.

of labor or making improvements upon any lode claim or placer claim, the person on whose behalf such outlay was made, or some person for him, may make and record in the office of the recorder wherein the claim is situate, an affidavit in the form hereinafter set out. And such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements.[27]

§ 746. Form of affidavit of annual labor.

AFFIDAVIT OF ANNUAL LABOR.

State of Colorado, }
—— County, } ss.

Before me, the subscriber, personally appeared —— ——, who, being duly sworn, saith that at least —— dollars' worth of work or improvements were performed or made upon [here describe claim or part of claim], situate in —— mining district, county of ——, state of Colorado, between the —— day of ——, A. D. ——, and the —— day of ——, A. D. ——. Such expenditure was made by or at the expense of —— ——, owners of said claim, for the purpose of complying with the law, and holding said claim.

Jurat: (Signature) —— ——.[28]

§ 747. Amendatory or additional certificate. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this act, such locator, or his assigns, may file an additional certificate, subject to the provisions of this act; provided, that such relocation does not interfere with the existing rights of others at the time of such reloca-

[27] Mills's Ann. Stats. Colo., § 3161.
[28] Id.

tion, and no such relocation or other record thereof shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous location.[29]

§ 748. **Relocation of abandoned lode.** The relocation of abandoned lode claims shall be by sinking a new discovery-shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or the relocator may sink the original discovery-shaft ten feet deeper than it was at the time of abandonment, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location-stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location-certificate may state that the whole or any part of the new location is located as abandoned property.[30]

§ 749. **Certificate of location shall contain but one location.** No location-certificate shall claim more than one location, whether the location be made by one or several locators. And if it purport to claim more than one location it shall be absolutely void, except as to the first location therein described, and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all.[31]

§ 750. **Actions involving title or right of possession to mining claim. Survey by order of court, and the proceedings therefor.** In all actions wherein the title or right of possession to any mining claim shall be in dispute, the court, or judge, may upon proper application, enter an order for the underground, as well as surface survey, of such part of the property in dispute as may be necessary to a just determination of the question involved; the order to designate some competent surveyor not related to any of the parties, or

[29] Mills's Ann. Stats. Colo., § 3160.
[30] Mills's Ann. Stats. Colo., § 3162.
[31] Mills's Ann. Stats. Colo., § 3163.

in any way interested in the suit; and upon the application of the party opposing the application the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it is to attend the survey and observe the method of making the same; the fee of said second surveyor to be paid by the party applying therefor. The order of survey may also specify the names of the witnesses named by either party, not exceeding three on each side, to examine the property, who shall be allowed to enter the property and examine it. The court, or judge, may also cause the removal of any rock, débris or other obstacle in any of the drifts or shafts of the property, when necessary. No order for survey and inspection shall be made except in open court or in chambers, upon at least six days' notice, and not then except by agreement, or upon the affidavit of at least two persons, that the survey and inspection is necessary; the affidavits to state the facts showing the necessity for the survey; nor shall such order be made unless it appears that the applicant has been refused the privilege of survey and inspection by the adverse party.[32]

§ 751. **Value of ore, and damages.** In trials for the recovery of the value of ore or mineral wrongfully mined and extracted, if plaintiff shows himself entitled to recover, provided he had the rightful possession of the ground from which the ore was taken at the time the action was brought or tried, the fact defendant may have been in possession, either actual or constructive, when the case was tried such fact shall not deprive plaintiff from recovering damages for the value of the ore or mineral mined and extracted according to the rules of law pertaining to the trials of actions of that character. But for the purpose of the action plaintiff shall be deemed and held to be in possession of all the ground, drifts, stopes, openings and premises from which the ore was taken. Although he may not be able to reach such ground from his own openings and workings. The rule of law that plaintiff can recover nominal or six cents damages

[32] Mills's Ann. Stats. Colo., § 3164.

for the first entry, and then wait until he obtains actual possession of the ground from which the ore was taken, and then bring another action for the value of the ore or mineral so mined and taken, shall not be observed nor applied to defeat, in the first action, the recovery of the value of the ore or mineral so wrongfully mined and taken.[33]

§ 752. **Partition of mining claims.** The Colorado statute providing for the partition of lands, tenements or hereditaments held in joint tenancy, tenancy in common or coparcenary, shall not apply to lode mines or lode mining claims, or to mining property, where the commissioners appointed by the court report that partition cannot be had consistently with the interests of the estate, or without great prejudice to the owners.[34]

[33] 3 Mills's Ann. Stats. Colo. (Rev. Sup. 1905), § 3164a.
[34] 3 Mills's Ann. Stats. Colo. (Rev. Sup. 1905), § 3346.

CHAPTER XIV.

STATE AND TERRITORIAL STATUTES. IDAHO.

§ 753. Who may take and hold mining claims.
§ 754. Width of claim, etc.
§ 755. Notice of location. Monument at point of discovery.
§ 756. Marking boundaries of lode claim.
§ 757. Necessity of discovery-shaft, and time when must be sunk.
§ 758. Relocation.
§ 759. Recording notice of location.
§ 760. Relocation of abandoned claim.
§ 761. Notice must claim but one location.
§ 762. Placer claims. Marking boundaries.
§ 763. Same. Notice of location.
§ 764. Same. Development excavation.
§ 765. Same. Record of location.
§ 766. Affidavit accompanying filing of notice.
§ 767. Proof of annual labor. Contents of affidavit. Effect of, as evidence.
§ 768. Amended locations.
§ 769. Deputy mining recorder.
§ 770. Same. Duty to transmit notices to recorder.
§ 771. Same. Other duties of.
§ 772. When right to mine is separate from ownership of surface.

§ 753. Who may take and hold mining claims. Any person, whether a citizen or alien, (except as hereinafter provided) natural or artificial, may take, hold and dispose of mining claims and mining property, real or personal, tunnel rights, mill sites, quartz-mills and reduction-works used or necessary or proper for the reduction of ores, and water rights used for mining or milling purposes, and any other lands or property necessary for the working of mines or the reduction of the products thereof: provided, that Chinese or persons of Mongolian descent, not born in the United States, are not permitted to acquire title to land or any real property under the provisions of this title.[1]

[1] Idaho Civ. Code, § 2555.

§ 754. **Width of claim, etc.** Mining claims hereafter located upon veins or lodes of quartz, or other rock in place bearing any of the metals or other valuable deposits mentioned in section 2320 of the Revised Statutes of the United States, may extend to 300 feet on each side of the middle of the vein or lode: provided, that when the locators have set stakes, posts or monuments described in section 2557 of this chapter, to indicate the line of the vein, ledge or lode such stakes, posts or monuments must be taken for the purpose of such location, to mark correctly the line thereof, and such line must not afterwards be changed so as to affect rights acquired or interfere with any location made subsequent thereto.[2]

§ 755. **Notice of location. Monument at point of discovery.** The locator, at the time of making the discovery of such vein or lode must erect a monument at such place of discovery, upon which he must place his name, the name of the claim, the date of discovery and distance claimed along the vein each way from such monument. Within ten days from date of discovery, the locator must mark his boundaries and post at his discovery monument a notice the same as in Colorado; further stating the distance claimed on each side of the middle of the ledge, and the distance and direction from the discovery monument to such natural object or permanent monument, if any there be, as will fix and describe in the notice itself the location of the claim; and the name of the mining district, county and state.[3]

§ 756. **Marking boundaries of lode claim.** The locator must mark the boundaries of his claim by establishing at each corner and at any angle in the side lines. a monument marked with the name of the claim and the corner or angle it represents. If a monument cannot be safely planted at the true corner or angle it may be placed as near thereto as

[2] Idaho Civ. Code, § 2556. [3] Idaho Civ. Code, § 2557.

practicable, and so marked as to indicate the place of the corner or angle. Monuments may be made of any such material and form as will readily give notice; and when of posts or trees must be hewn and marked upon the side facing toward the discovery. They must be at least four inches square or in diameter, and at least four feet high above the ground: and trees must be so hewn as readily to attract attention.[4]

§ 757. Necessity of discovery-shaft, and time when must be sunk. Same as Colorado,[5] with the additional requirement that it must be not less than sixteen square feet in area; and any excavation which cuts the vein ten feet from the lower part of the rim of the shaft and measures 160 cubic feet in extent is considered a compliance with the statute.[6]

§ 758. Relocation. Any located claim upon which work has been done in compliance with the above requirements is not, unless abandoned, subject to relocation for a period of ninety days from and after the date of location.[7]

§ 759. Recording notice of location. Within ninety days after location, the locator or his assigns must file in the office of the county recorder or of the deputy recorder of the mining district, a substantial copy of his notice of location.[8]

§ 760. Relocation of abandoned claim. The relocation of abandoned claims is made in the same manner as original location: the locator may, instead of sinking a new discovery-shaft, sink the original discovery-shaft ten feet deeper than originally, or drive the open cut or tunnel ten feet further along the course of the lead, lode or vein, and must erect new posts or monuments.[9]

[4] Idaho Civ. Code, § 2557.
[5] See ante, p. 576.
[6] Idaho Civ. Code, § 2558.
[7] Idaho Civ. Code, § 2558.
[8] Idaho Civ Code, § 2559.
[9] Idaho Civ. Code, § 2560.

§ 761. **Notice must claim but one location.** Same as Colorado.[10]

§ 762. **Placer claims. Marking boundaries.** The locator of a placer claim must at the time of making the location place at each corner of the location a substantial post or monument.[11]

§ 763. **Same. Notice of location.** Locator must, at the time of making location, place substantial post or monument, as required in the case of quartz claim, at each corner of location. Notice of location must be posted on one of the posts or monuments and contain the date of the location, the name of the locator, name and dimensions of the claim, mining district, if any, and county in which the claim is situated, and the distance and direction from the post or monument to such natural object or permanent monument, if any there be, as will fix and describe in the notice itself the location of the claim.[12]

§ 764. **Same. Development excavation.** Within fifteen days after making location, the locator must make an excavation upon the claim of not less than one hundred cubic feet, for the purpose of prospecting the same.[13]

§ 765. **Same. Record of location.** Within thirty days after the location, the locator must file for record in the office of the county recorder, or of the deputy recorder of the mining district, a substantial copy of his notice of location, to which must be attached an affidavit such as is required in the case of quartz claims.[14]

§ 766. **Affidavit accompanying filing of notice.** At or before the time of filing a notice of location, whether for

[10] Idaho Civ. Code, § 2561. For Colorado provision, see ante, p. 572.
[11] Idaho Civ. Code, § 2563.
[12] Id.
[13] Id.
[14] Id.

placer or lode, one of the locators named must make and subscribe an affidavit, in writing on or attached to the notice, as follows:

State of Idaho, }
County of ——, } ss.

I, —— ——, do solemnly swear that I am a citizen of the United States of America (or have declared my intentions to become such) and that I am acquainted with the mining-ground described in this notice of location, and herewith called the —— ledge, lode or claim; that the ground and claim therein described or any part thereof has not, to the best of my knowledge and belief, been located according to the laws of the United States and of this state, or if so located, that the same has been abandoned or forfeited by reason of the failure of such former locators to comply in respect thereto with the requirements of said laws, and (in the case of quartz claims) that I have opened new ground to the extent or depth of ten feet as required by the laws of Idaho. Signature —— ——.

Subscribed and sworn to before me this —— day of ——, A. D. 19—. Signature —— ——.[15]

§ 767. Proof of annual labor. Contents of affidavit. Effect of, as evidence. Within sixty days after any time set or period allowed for the performance of labor, or making improvements upon any lode, or placer claim, the person in whose behalf such work or improvement is performed or some person for him must make and record an affidavit in substance as follows:

State of Idaho, }
County of ——, } ss.

Before me the subscriber, personally appeared —— ——, who being first duly sworn says that at least —— dollars' worth of work for improvements were performed or made

[15] Idaho Civ. Code, § 2564.

upon —— claim, situate in —— mining district, county of ——, state of Idaho: That such expenditure was made by, for, or at the expense of ——, owner of said claim for the purpose of holding said claim and all stakes, monuments or trees marking boundaries of said claims are in proper place and position.

Subscribed and sworn to before me this —— day of ——, 19—.

The fee for administering the oath and recording the foregoing affidavit, when taken before the county recorder or deputy mining recorder shall be fifty cents; the fee for recording the same when the oath is taken before any other officer authorized to administer oaths shall be fifty cents.

Such affidavit, or a certified copy thereof in case the original is lost shall be prima facie evidence of the performance of such labor. The failure to file such affidavit shall be considered prima facie evidence that such labor has not been done.[16]

§ 768. **Amended locations.** Same as Colorado statute,[17] except last sentence.[18]

§ 769. **Deputy mining recorder.** The statute authorizes the county recorder to appoint a deputy mining recorder at places more than twenty miles distant from an existing office, on petition of ten or more locators; and upon his failure to appoint the miners may appoint one of their number to act as such.[19]

§ 770. **Same. Duty to transmit notices to recorder.** He must at least once in each month, transmit to the county recorder all notices of location filed with him for record and not previously transmitted, which must at once be recorded by the recorder in a proper book.[20]

[16] Idaho Civ. Code, § 2565.
[17] See ante, p. 579.
[18] Idaho Civ. Code, § 2566.
[19] Idaho Civ. Code, § 2567.
[20] Idaho Civ. Code, § 2569.

§ 771. Same. Other duties of. Is not authorized to perform any other duties than the special duties fixed by the statute.[21]

§ 772. When right to mine is separate from ownership of surface. When the right to mine is in any case separate from the ownership or right of occupancy of the surface-ground, the owners or rightful occupants of the surface-ground may demand satisfactory security from the miners, and if it be refused or not given, may enjoin such miners from working such ground until such security is given. The court granting the writ of injunction shall fix the amount and nature of the security.[22]

[21] Idaho Civ. Code, § 2570.

[22] Idaho Civ. Code, § 2571.

CHAPTER XV.

STATE AND TERRITORIAL STATUTES. MONTANA.

§ 773. Mining claims. Discovery and location.
§ 774. Notice of location posted. What to contain.
§ 775. Boundaries of claim. When and how marked.
§ 776. Sufficiency of other monuments question of fact.
§ 777. Discovery-shaft. To sink within sixty days of posting.
§ 778. Notice of location.
§ 779. Contents.
§ 780. Verification.
§ 781. Mill sites.
§ 782. Relocation of abandoned claims.
§ 783. Rights of a relocator.
§ 784. Amended locations.
§ 785. Relocations.
§ 786. Previous rights not waived by relocation.
§ 787. Third persons' rights. Not to be interfered with by relocation.
§ 788. Locations heretofore made valid.
§ 789. Time prescribed not mandatory.
§ 790. United States patent. Proof of compliance with state laws.
§ 791. Repealing clause.
§ 792. When act takes effect.
§ 793. Certificate of survey.
§ 794. Eminent domain. Public uses. Mines, mills, and smelters.

§ 773. Mining claims. Discovery and location. Any person who discovers, upon the public domain of the United States, within the state of Montana, a vein, lode or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States, may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge or deposit, in the following manner:[1]

[1] Mont. Laws 1907, p. 18, § 1.

§ 774. **Notice of location posted. What to contain.** 1. He shall post, conspicuously, at the point of discovery a written or printed notice of location, containing the name of the claim, the name of the locator, (or locators, if there be more than one,) the date of the location, which shall be the date of posting such notice, and the approximate dimensions of area of the claim intended to be appropriated.[2]

§ 775. **Boundaries of claim. When and how marked.** 2. Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides. (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump, of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound. (3) A stone at least six inches square by eighteen inches in length, set two thirds of its length in the ground, with a mound of earth or stone alongside at least four feet in diameter by two feet in height, or (4) a boulder at least three feet above the natural surface of the ground on the upper side.[3]

§ 776. **Sufficiency of other monuments question of fact.** Where other monuments, or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily

[2] Mont. Laws 1907, p. 18, § 1. [3] Id.

traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.[4]

§ 777. **Discovery-shaft. To sink within sixty days of posting.** 3. Within sixty days after posting such notice, he shall sink a shaft upon the vein, lode or deposit, at or near the point of discovery, to be known as the discovery-shaft. Such shaft shall be sunk to the depth of at least ten feet, vertically, below the lowest part of the rim of such shaft at the surface, or deeper if necessary to disclose the vein or deposit located, and the cubical contents of such shaft shall be not less than one hundred and fifty cubic feet; provided, that any cut or tunnel which discloses the vein, lode or deposit located at a vertical depth of at least ten feet below the natural surface of the ground and which constitutes at least one hundred and fifty cubic feet of excavation, shall be deemed the equivalent of such shaft, and, provided also, that, where the vein, lode or deposit located is disclosed at a less vertical depth than ten feet, any deficiency in the depth of the discovery-shaft, cut or tunnel may be compensated for by any horizontal extension of such working, or by any excavation done elsewhere upon the claim, equaling, in cubical contents, the cubical extent of such deficiency; but in every case at least 75 cubic feet of excavation shall be made at the point of discovery.[5]

§ 778. **Notice of location.** Within sixty days after posting the notice of location and for the purpose of constituting constructive notice of the location, the locator shall record his location in the office of the county clerk of the county in which such mining claim is situated.[6]

§ 779. **Contents.** Such record shall consist of a certificate of location containing:

1. The name of the lode or claim.

[4] Mont. Laws 1907, p. 19.
[5] Id., pp. 19, 20.
[6] Mont. Laws 1907, p. 20, § 2.

2. The name of the locator or locators, if there be more than one.

3. The date of location, and such a description of said claim, with reference to some natural object or permanent monument, as will identify the claim.

4. In the case of a lode claim, the direction and distance claimed along the course of the vein each way from the discovery-shaft, cut or tunnel, with the width claimed on each side of the center of the vein.

5. In the case of a placer claim, the dimensions or area of the claim, and the location thereon of the discovery-shaft, cut or tunnel.

6. The locator and claimant, at his option, may also set forth, in such certificate of location, a description of the discovery-work, the corner-monuments and the markings thereon, and any other facts showing a compliance with the provisions of this law.[7]

§ 780. **Verification.** Such certificate of location must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit.

A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein.[8]

§ 781. **Mill sites.** Mill-site claims may be located and recorded in the same manner as other claims, except that no discovery or discovery-work is required. Where a mill-site claim is appurtenant to a mining claim, the certificate of location of such mill-site claim shall describe, by appropriate reference, the mining claim to which it is appurtenant.[9]

[7] Mont. Laws 1907, p. 20, § 2.
[8] Id., pp. 20, 21.
[9] Mont. Laws 1907, p. 21, § 3.

§ 782. **Relocation of abandoned claims.** The relocator of an abandoned or forfeited mining claim may adopt as his discovery any shaft or other working, existing upon such claim at the date of the relocation, in which the vein, lode or deposit is disclosed, but, in such shaft or other working, he shall perform the same discovery-work as is required in the case of an original location.[10]

§ 783. **Rights of a relocator.** The rights of a relocator of any abandoned or forfeited mining claim, hereafter relocated, shall date from the posting of his notice of location thereon, and, while he is duly performing the acts required by law to perfect his location, his rights shall not be affected by any re-entry or resumption of work by the former locator or claimant.[11]

§ 784. **Amended locations.** A locator or claimant may, at any time, amend his location and make any change in the boundaries which does not involve a change in the point of discovery as shown by the discovery-shaft by marking the location as amended upon the ground, and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate.[12]

§ 785. **Relocations.** A locator or claimant may, at any time, relocate his own claim for any purpose, except to avoid the performance of annual labor thereof, and by such relocation, may change the boundaries of his claim, or the point of discovery, or both, but such relocation must comply, in all respects, with the requirements of this law as to an original location.[13]

[10] Mont. Laws 1907, p. 21, § 4.
[11] Mont. Laws 1907, p. 21, § 5.
[12] Mont. Laws 1907, p. 21, § 6.
[13] Mont. Laws 1907, p. 22, § 7.

§ 786. **Previous rights not waived by relocation.** Where a locator or claimant amends or relocates his claim, such amendment or relocation shall not be construed as a waiver of any right or title acquired by him by virtue of the previous location or record thereof, except as to such portions of the previous location as may be omitted from the boundaries of the claim as amended or relocated.[14]

As to the portion of ground included both in the original location and the location as amended or relocated, he may rely either upon the original location or the location as amended or relocated, or upon both. Provided, that nothing herein contained shall be construed as permitting the locator or claimant to hold a tract which does not include a valid discovery.[15]

§ 787. **Third persons' rights. Not to be interfered with by relocation.** No amendment or relocation of a mining claim by the locator or claimant thereof shall interfere with the right of any third person existing at the time of such amendment or relocation.[16]

§ 788. **Locations heretofore made valid.** All mining locations, made and recorded under the laws of this state, heretofore in force, that in any respect have failed to conform to the requirements of such laws, shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this act, be valid if the making and recording of such locations conform to the requirements of this act.[17]

§ 789. **Time prescribed not mandatory.** The period of time, prescribed by this law for the performance of any act, shall not be deemed mandatory where the act is performed before the rights of third persons have intervened, and no defect in the posted notice or recorded certificate shall be

[14] Mont. Laws 1907, p. 22, § 8.
[15] Id.
[16] Mont. Laws 1907, p. 22, § 9.
[17] Mont. Laws 1907, p. 22, § 10.

deemed material, except as against one who has located the same ground, or some portion thereof, in good faith and without notice.[18]

Notice to an agent, who makes a location in behalf of another, shall be deemed notice to his principal, and notice to one of several co-claimants shall be deemed notice to all.[19]

§ 790. **United States patent. Proof of compliance with state laws.** The issuance of a United States patent for a mining claim shall be deemed conclusive that the requirements of the laws of this state, relative to the location and record of such mining claim, have been duly complied with; provided, however, that where questions of priority are involved the date of the location shall be an issuable fact where it is claimed to have been prior to the date of the record of the location.[20]

§ 791. **Repealing clause.** All acts and parts of acts in conflict herewith, including sections 3610 and 3615 of the Political Code, and sections 3611 and 3612 of the said code as amended by an act of the seventh legislative assembly, entitled:

An act to amend sections 3611 and 3612 of the Political Code of Montana, relating to the location of mining claims and the making and filing of declaratory statements, approved March 15, 1901, are hereby repealed.[21]

§ 792. **When act takes effect.** This statute took effect from and after its passage and approval, and was approved February 18, 1907.[22]

§ 793. **Certificate of survey.** Where a locator or owner of a mining claim has the boundaries and corners of his claim established by a United States deputy mineral surveyor

[18] Mont. Laws 1907, pp. 22, 23, § 11.
[19] Id.
[20] Mont. Laws 1907, p. 23, § 12.
[21] Mont. Laws 1907, p. 23, § 13.
[22] Mont. Laws 1907, p. 23, § 14.

and his claim connected with a corner of the public or minor surveys or an established initial point, and incorporates into the declaratory statement the field-notes of such survey, and attaches to and files with such declaratory statement, a certificate by the surveyor setting forth:

1. That said survey was actually made by him, giving the date thereof.

2. The name of the claim surveyed and the locators thereof.

3. That the description incorporated in the declaratory statement is sufficient to identify the claim.

Such survey and certificate becomes a part of the declaratory statement and such declaratory statement is prima facie evidence of the facts therein contained. The provisions of this chapter apply only to locations made after this code takes effect.[23]

§ 794. **Eminent domain. Public uses. Mines, mills, and smelters.** Subject to the provisions of this statute the right of eminent domain may be exercised in Montana in behalf of the following public uses:

Roads, tunnels, ditches, flumes, pipes and dumping-places for working mines, mills or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposits or conduct of tailings or refuse matter from their several mines, mills or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.[24]

[23] Mont. Pol. Code, § 3616.

[24] Mont. Laws 1907, p. 5, § 2211, par. 5.

CHAPTER XVI.

STATE AND TERRITORIAL STATUTES. NEVADA.

Mining Laws.

§ 795. Who may be locator. What notice must contain.
§ 796. Location-work. What constitutes. Boundaries defined how.
§ 797. Location-notice to be recorded. What notice must contain. Record not containing foregoing items void.
§ 798. What location includes.
§ 799. Lode claim. Apex cannot follow trend beyond exterior lines.
§ 800. Defective certificates. Relocation. Amendatory or additional certificates.
§ 801. Relocation of abandoned lode claims.
§ 802. Survey and certificate of surveyor becomes part of record.
§ 803. Amount of assessment-work.
§ 804. Affidavit of work performed.
§ 805. Co-owners. Notice to delinquents. Penalty.
§ 806. Notice or certificate of location to contain but one location.
§ 807. Placer claims. Location. Marking boundaries.
§ 808. Same. Work to be performed.
§ 809. Same. What location-certificate must contain.
§ 810. Same. Recording location-certificate.
§ 811. Mill site.
§ 812. Same. What notice of location must contain.
§ 813. Same. Marking boundaries.
§ 814. Same. Record of location.
§ 815. Same. When location is void.
§ 816. Tunnel right. How located.
§ 817. Same. Establishment of boundary lines.
§ 818. Same. Recording.
§ 819. Same. Blind lodes or veins.
§ 820. Certificates of location or labor need not be sworn to.
§ 821. Certificates to be recorded with county recorder in all cases.
§ 822. Salt-lands.
§ 823. Same. Survey of salt-lands. Location.
§ 824. Same. When subject to relocation.
§ 825. County recorder to be ex officio district mining recorder.
§ 826. Duties of mining recorders.
§ 827. Fees of recorders.

§ 828. Duty of mining recorders. Duplicate notices.
§ 829. Fees to be collected by district mining recorders for duplicate notices.
§ 830. Duplicate notices to be filed with county recorder.
§ 831. Fees for recording duplicate notices.
§ 832. Recorder to give locator receipt.
§ 833. Receipt prima facie evidence.
§ 834. Mining recorder's seal.
§ 835. Mining recorders notified by county recorders.
§ 836. Same. Penalty.
§ 837. Land granted to and selected by the state. Exploration and appropriation.
§ 838. State disclaiming interest in mineral lands.
§ 839. Prospector may enter on private land.
§ 840. May locate mineral deposit. How.
§ 841. Method of proceeding prescribed.
§ 842. Title. How acquired.
§ 843. Basis for determining value.
§ 844. False dating of location-notices forbidden.
§ 845. Same. Penalty for false dating.
§ 846. Grub-stake contracts to be recorded.

§ 795. Who may be locator. What notice must contain. Any person, a citizen of the United States or one who has declared his intention to become such, who discovers a vein or lode, may locate a claim upon such vein or lode by defining the boundaries of the claim in the manner hereinafter described, and by posting a notice of such location at the time and point of discovery, which notice must be posted upon one of the several monuments prescribed in section 2 of this act, and such notice must contain:

First — The name of the lode or claim;

Second — The name of the locator or locators;

Third — The date of the location;

Fourth — The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the vein, and the general course of the vein or lode as near as may be.[1]

[1] Nev. Stats., act March 16, 1867, § 1, as amended by act March 20, 1907; took effect on and after July 1, 1907: Nev. Stats. 1907, p. 419.

§ 796. **Location-work. What constitutes. Boundaries defined how.** The locator of the lode mining claim must sink a discovery-shaft upon the claim located four feet by six feet to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary to show by such work a lode deposit of mineral in place; a cut or crosscut or tunnel which cuts the lode at a depth of ten feet or an open cut along the said ledge or lode, equivalent in size to a shaft four feet by six feet by ten feet deep, is equivalent to a discovery-shaft. The locator must define the boundaries of his claim by removing the top of a tree (having a diameter of not less than four inches) not less than three feet above the ground, and blazing and marking the same, or by a rock in place, capping such rock with smaller stones, such rock and stones to have a height of not less than three feet, or by setting a post or stone one at each corner and one at the center of each side line. When a post is used, it must be at least four inches in diameter by four and one half feet in length set one foot in the ground. When it is practically impossible, on account of bed-rock or precipitous ground, to sink such posts, they may be placed in a mound of earth or stones, or where the proper placing of such posts or other monuments is impracticable or dangerous to life or limb, it shall be lawful to place such posts or monuments at the nearest point properly marked to designate its right place. When a stone is used (not a rock in place) it must be not less than six inches in diameter and eighteen inches in length set two thirds of its length in the top of a mound of earth or stone, four feet in diameter and two and one half feet in height. All trees, posts or rocks used as monuments, when not four feet in diameter at the base, shall be surrounded by a mound of earth or stone four feet in diameter by two feet in height, which trees, posts, stones or rock monuments must be so marked as to designate the corners of the claim located; provided, however, that the locator of a mining claim shall within twenty days from the date of posting the notice of location define the boundaries of said claim by placing at each corner and at the center of each side line one of the hereinbefore

described monuments, and shall within ninety days of the date of posting said location-notice perform the location-work hereinbefore described.[2]

§ 797. Location-notice to be recorded. What notice must contain. Record not containing foregoing items void. Any locator or locators of a mining claim, after having established the boundaries of said claims, and after having complied with the provisions of this act with reference to the establishment of such boundaries, may file with the district mining recorder a notice of location, setting forth the name given to the lode or vein, the number of linear feet claimed in length along the course of the vein, the date of location, the date on which the boundaries of the claim were completed, and the name of the locator or locators. Should any claim be located in any section or territory where no district has been as yet formed, or where there is no district recorder, the locator or locators of such claims may file with the county recorder, notice of location as set forth above, and said notice of location will be prima facie evidence in all courts of justice of the first location of said lode or vein. Within ninety days of the date of posting the location-notice upon the claim the locator shall record his claim with the mining district recorder and the county recorder of the mining district or county in which such claim is situated by location-certificate which must contain:

First — The name of the lode or vein;

Second — The name of the locator or locators;

Third — The date of the location and such description of the location of said claim, with reference to some natural object or permanent monument, as will identify the claim.

Fourth — The number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width on each side of the center of the vein, and the general course of the lode or vein as near as may be;

Fifth — The dimensions and locations of the discovery-shaft or its equivalent, sunk upon the claim;

[2] Nev. Stats. 1907, p. 419, § 2.

Sixth — The location and description of each corner, with the markings thereon.

Any record of the location of a lode mining claim which shall not contain all the requirements named in this section shall be void. All records of lode or placer mining claims, mill sites or tunnel rights heretofore made by any recorder of any mining district or any county recorder are hereby declared to be valid and to have the same force and effect as records made in pursuance of the provisions of this act. And any such record, or copy thereof duly verified by a mining recorder or duly certified by a county recorder shall be prima facie evidence of the facts therein stated.[3]

§ 798. **What location includes.** The same as Colorado.[4]

§ 799. **Lode claim. Apex cannot follow trend beyond exterior lines.** Same as Colorado.[5]

§ 800. **Defective certificates. Relocation. Amendatory or additional certificates.** Same as Colorado.[6]

§ 801. **Relocation of abandoned lode claims.** Same as Colorado,[7] except that it is further required that the record must give the depth and dimensions of of the original discovery-shaft at the date of the relocation; and if it is not known to the relocator that his location is on an abandoned claim then the statute does not apply.[8]

§ 802. **Survey and certificate of surveyor becomes part of record.** Where a locator or his assigns, has the boundaries and corners of his claim established by a United States deputy mineral surveyor, or a licensed surveyor of this state, and his claim connected with a corner of the public or minor surveys of an established initial point, and incor-

[3] Nev. Stats. 1907, p. 419, § 3.
[4] Nev. Comp. Laws, § 211, 4. For Colorado provisions, see ante, p. 577.
[5] Nev. Comp. Laws, § 212, 5. For Colorado provisions, see ante, p. 577.
[6] Nev. Comp. Laws, § 213, 6. For Colorado provisions, see ante, p. 579.
[7] See ante, p. 580.
[8] Nev. Comp. Laws, § 214, 7.

porates into the record of the claim the field-notes of such survey, and attaches to and files with such location-certificate a certificate of the surveyor, setting forth: First. That said survey was actually made by him, giving the date thereof; second, the name of the claim surveyed and the location thereof; third, that the description incorporated in the declaratory statement is sufficient to identify. Such survey and certificate becomes a part of the record, and such record is prima facie evidence of the facts therein contained.[9]

§ 803. **Amount of assessment-work.** The amount of work done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit: One hundred dollars annually. In estimating the worth of labor required to be performed upon any mining claim, to hold the same under the laws of the United States, the value of a day's labor is hereby fixed at the sum of four dollars; provided, however, that in the sense of this statute eight hours of labor actually performed upon the mining claim shall constitute a day's labor.[10]

§ 804. **Affidavit of work performed.** Within sixty days after the performance of labor or making of improvements, required by law to be annually performed or made upon any mining claim, the person in whose behalf such labor was performed, or improvements made, or some one in his behalf, shall make and have recorded by the mining district recorder or the county recorder in books kept for that purpose in the mining district or county in which such mining claim is situated, an affidavit setting forth the amount of money expended, or value of labor or improvements made, or both, the character of expenditures or labor or improvements, a description of the claim or part of the claim affected by such expenditures, or labor or improvements, for what year, and the name of the owner or claimant of said claim at whose

[9] Nev. Comp. Laws, § 215, 8.
[10] Nev. Comp. Laws, § 216, 9.

expense the same was made or performed. Such affidavit, or a copy thereof, duly certified by the county recorder, shall be prima facie evidence of the performance of such labor or the making of such improvements, or both.[11]

§ 805. Co-owners. Notice to delinquents. Penalty. Whenever a co-owner or co-owners shall give to a delinquent co-owner or co-owners the notice in writing or notice by publication provided for in section 2324, Revised Statutes of the United States, an affidavit of the person giving such notice, stating the time, place, manner of service, and by whom and upon whom such service was made, shall be attached to a true copy of such notice, and such notice and affidavit must be recorded by the mining district recorder or the county recorder, in books kept for that purpose, in the mining district or county in which the mining claim is situated; within ninety days after the giving of such notice, or if such notice is given by publication in a newspaper, there shall be attached to a printed copy of such notice an affidavit of the printer or his foreman or principal clerk of such paper, stating the date of the first, last and each insertion of such notice therein, and when and where the newspaper was published during that time, and the name of such newspaper. Such affidavit and notice shall be recorded as aforesaid within one hundred and eight days after the first publication thereof. The original of such notice and affidavits, or a duly certified copy of the record thereof, shall be evidence that the delinquent mentioned in section 2324 has failed or refused to contribute his proportion of the expenditures required by that section and of the service or publication of said notice; provided the writing or affidavit hereinafter provided for is not of record. If such delinquent shall, within the ninety days required by section 2324 aforesaid, contribute to his co-owner or co-owners his proportion of such expenditures, such co-owner or co-owners shall sign and deliver to the delinquent or delinquents a writing, stating that the delinquent or delinquents by name, has

[11] Nev. Comp. Laws, § 217, 10.

within the time required by section 2324 of the Revised Statutes of the United States contributed his share for the year ——, upon the —— mine, and further stating therein the district, county and state where the same is situate and the book and page where the location-notice is recorded; such writing shall be recorded in the office of the county recorder of said county. If such co-owner or co-owners shall fail to sign and deliver such writing to the delinquent or delinquents within twenty days after such contribution, the co-owner or co-owners so failing as aforesaid shall be liable to a penalty of one hundred dollars, to be recovered by any person for the use of the delinquent or delinquents in any court of competent jurisdiction. If such co-owner or co-owners fail to deliver such writing within said twenty days, then the delinquent with two disinterested persons having personal knowledge of such contribution, may make affidavit setting forth in what manner, the amounts of, to whom and upon what mine, such contribution was made. Such affidavit, or a record thereof in the office of the county recorder of the county in which said mine is situate, shall be prima facie evidence of such contribution.[12]

§ 806. **Notice or certificate of location to contain but one location.** Same as Colorado.[13]

§ 807. **Placer claims. Location. Marking boundaries.** The location of a placer claim shall be made in the following manner: By posting thereon, upon a tree, rock in place, stone, post, or monument, a notice of location, containing the name of the claim, name of locator or locators, date of location, and the number of feet or acres claimed, and by marking the boundaries and the location point in the same manner and by the same means as required by the laws of this state for marking the boundaries of lode claim locations; provided, that where the United States survey has been extended over the land embraced in the location, the claim may be taken

[12] Nev. Comp. Laws, § 218, 11.

[13] Nev. Comp. Laws, § 219, 12. For Colorado provisions, see ante, p. 580.

by legal subdivisions, and, except the marking of the location point as hereinbefore prescribed, no other markings than those of said survey shall be required.[14]

§ 808. **Same. Work to be performed.** Within ninety days after the posting of the notice of location of a placer claim, the locator shall perform not less than twenty dollars' worth of labor upon the claim for the development thereof.[15]

§ 809. **Same. What location-certificate must contain.** Same as Colorado, except that it must state the kind and amount of work done, and the place on the claim where the development-work was done.[16]

§ 810. **Same. Recording location-certificate.** Within ninety days the discoverer of a placer claim must record with the mining district recorder and the county recorder of the district and county wherein the claim is situate a location-certificate. The certificate or the record thereof, or the duly certified copy of the record is prima facie evidence of the facts stated therein. But if the certificate does not state all the facts required to be stated it is void.[17]

§ 811. **Mill site.** The proprietor of a vein or lode claim or mine, or the owner of a quartz-mill or reduction-works, may locate five acres of non-mineral land as a mill site.[18]

§ 812. **Same. What notice of location must contain.** The locator of a mill-site location shall locate his claim by posting a notice of location thereon, which must contain:

(1) The name of the locator or locators.

[14] Nev. Comp. Laws, § 220, 13, as amended Stats. 1899, p. 94.
[15] Nev. Comp. Laws, § 221, 14.
[16] Id.
[17] Id.
[18] Nev. Comp. Laws, § 222, 15.

It should be noted, however, that the Federal statutes have provisions with reference to the location of a mill site, not contained in the above statute, and the locator of such mill site should consult the Federal statute, given ante, p. 341.

(2) The name of the vein or lode claim, or mine, of which he is the proprietor, or the name of the quartz-mill or reduction-works of which he is the owner.

(3) The date of the location.

(4) The number of feet or acres claimed.

(5) A description of the claim by such reference to a natural object or permanent monument as shall identify the claim or mill site.[19]

§ 813. **Same. Marking boundaries.** And by marking the boundaries of his claim in the same manner as provided in this act for the marking of the boundaries of a placer mining claim, so far as the same may be applicable thereto.[20]

§ 814. **Same. Record of location.** The locator of a mill-site claim or location shall within thirty days from the date of his location record his location with the mining district recorder and the county recorder of the district or county in which such location is situated, by a location-certificate which must be similar in all respects to the one posted on the location.[21]

§ 815. **Same. When location is void.** Any record of a mill-site location which shall not contain the name of the locator or locators, the name of the vein or lode claim or mine of which the locator is the proprietor, or the name of the quartz-mill or reduction-works of which the locator is the owner, the number of feet or acres claimed, and such description as shall identify the claim with reasonable certainty, shall be void.[22]

§ 816. **Tunnel right. How located.** The locator of a tunnel right or location shall locate his tunnel right or location by posting a notice of location at the face or point of commencement of the tunnel which must contain:

[19] Nev. Comp. Laws, § 223, 16.
[20] Id.
[21] Nev. Comp. Laws, § 224, 17.
[22] Nev. Comp. Laws, § 225, 18.

(1) The name of the locator or locators.

(2) The date of the location.

(3) The proposed course or direction of the tunnel.

(4) The height and width thereof.

(5) The position and character of the boundary monuments.

(6) A description of the tunnel by such reference to a natural object or permanent monument as shall identify the claim or tunnel right.[23]

§ 817. **Same. Establishment of boundary lines.** The boundary lines of the tunnel shall be established by stakes or monuments placed along such lines at an interval of not more than three hundred feet from the face or point of commencement of the tunnel to the terminus of three thousand feet therefrom. The stakes or monuments shall be of the same size and character as those provided for lode or placer claims in this act.[24]

§ 818. **Same. Recording.** The locator of a tunnel right or location shall within sixty days from the date of the location record his location with the mining district recorder and the county recorder of the county or district in which such location is situated, which must be similar in all respects to the one posted on the location. Any record of a tunnel right or location which shall not contain all the requirements named in this section shall be void.[25]

§ 819. **Same. Blind lodes or veins.** All blind lodes, or veins or lodes not previously known to exist, discovered in a tunnel run for the development of a vein or lode, or for the discovery of mines, and within three thousand feet from the face of such tunnel, shall be located upon the surface and held in like manner as other lode claims under the provisions of this act.[26]

[23] Nev. Comp. Laws, § 226, 19.
[24] Nev. Comp. Laws, § 227, 20.
[25] Nev. Comp. Laws, § 228, 21.
[26] Nev. Comp. Laws, § 229, 22.

§ 820. **Certificates of location or labor need not be sworn to.** Certificates of location are not required to be in any specified form nor to state the facts in any specified order; but they must truly state the required facts, and need not be sworn to.[27]

§ 821. **Certificates to be recorded with county recorder in all cases.** Where there is no mining district, or where the residence of the district officers or their places of business within the district where the books are kept are not publicly known, district recording shall not be required. But recording in the office of the county recorder is required in all cases, whether there is a district recorder or not.[28]

§ 822. **Salt-lands.** The method of disposal of salt-lands under the Nevada statute is clearly at variance with the Federal statute as it now stands.[29]

§ 823. **Same. Survey of salt-lands. Location.** It shall be the duty of any person or persons locating salt-lands to have the same surveyed by the county surveyor of the county in which said lands are located, within thirty days from the date of location; and the surveyor shall, within thirty days from the completion of said survey, make and deliver to the party employing him to make the survey, a correct description and plat of the lands thus surveyed, and the same shall be recorded in the office of the county recorder of said county within thirty days from the delivery thereof by the surveyor.[30]

§ 824. **Same. When subject to relocation.** All persons claiming and holding saline-lands under the provisions of this act shall keep and hold actual possession of said lands by occupying the same, and whenever said lands are aban-

[27] Nev. Comp. Laws, § 231, 24.
[28] Nev. Comp. Laws, § 232, 25.
[29] See ante, § 436; also 21 Land Dec. 131.
[30] Nev. Comp. Laws, § 234, 2.

doned for a period longer than sixty days, the same shall be subject to relocation.[31]

§ 825. **County recorder to be ex officio district mining recorder.** In every mining district in this state, in which the seat of government of any county is situated, the county recorder of said county shall be ex officio district mining recorder, subject in the discharge of his duties to such rules, regulations, and compensations as may be now in force or hereafter prescribed by the mining laws of the mining districts respectively to which this act is applicable. He shall, as such ex officio mining recorder, be responsible on his official bond for the faithful performance of the duties of his office and the correct and safe keeping of all the records thereof, and the correct and safe keeping of the copies of all the records mentioned and referred to in section two of this act.[32]

§ 826. **Duties of mining recorders.** It shall be the duty of each and every mining recorder of the several mining districts in the state, on or before the first Monday in January, April, July and October in each year, to transcribe into a suitable book or books, to be provided for that purpose, and to deposit and file with the county recorders of the respective counties in which said mining district may be located, a full, true, and correct copy of the mining records of the respective mining districts for the three months next preceding said first Mondays in January, April, July and October, duly certified under oath; provided, this section shall not apply to the mining recorder created by section one of this act.[33]

§ 827. **Fees of recorders.** The several mining recorders shall receive for services herein required by section two of this act, one dollar for the transcript of each claim, including

[31] Nev. Comp. Laws, § 236, 4.
[32] Nev. Comp. Laws, § 237, 1, as amended Stats. 1881, p. 333.
[33] Nev. Comp. Laws, § 238, 2.

the oath, which shall be paid at the time of recording by the parties making the location.[34]

§ 828. **Duty of mining recorders. Duplicate notices.** It shall be the duty of each and every mining recorder of the several mining districts of the state to require all persons locating and recording a mining claim to make a duplicate copy of each and every mining notice, which copy the said mining recorder shall carefully compare with the original, and mark "Duplicate" on its face or margin, and he shall immediately deposit with or transmit the same to the county recorders of the respective counties in which said mining district may be located.[35]

§ 829. **Fees to be collected by district mining recorders for duplicate notices.** The said district mining recorders, at the time of comparing said duplicate notices with the original, shall collect from the locators of said mining claims the sum of one dollar for each and every notice compared, which sum he shall transmit, together with the said duplicate notices, to the county recorders of the respective counties in which said mining claims shall be located.[36]

§ 830. **Duplicate notices to be filed with county recorder.** Whenever, owing to the distance of the mining district from the county seat, it becomes inconvenient for the district mining recorder to personally deposit the duplicate copy with the county recorder, then in that case he may forward the same by mail or express, or such other manner as will insure safe transit and delivery to the county recorder.[37]

§ 831. **Fees for recording duplicate notices.** The county recorders of the several counties shall receive for their services for recording each of said duplicate notices mentioned

[34] Nev. Comp. Laws, § 240, 4.
[35] Nev. Comp. Laws, § 244, 1.
[36] Nev. Comp. Laws, § 245, 2.
[37] Nev. Comp. Laws, § 246, 3.

in section two of this act, the sum of one dollar; provided, that in case the location is made outside of an organized mining district or in the absence of a mining recorder in any organized district, then the person or persons making such location shall within ninety days after making such location transmit a duplicate copy of such notice to the recorder of the county in which the location is made and the recorder shall record the same for a fee of one dollar.[38]

§ 832. **Recorder to give locator receipt.** Whenever the locator of a mining claim shall file his certificate of location in accordance with the law and pay the prescribed fees therefor, it shall be the duty of the mining district recorder, and of the county recorder, with whom said certificate is filed, forthwith to give such locator, or his agent, a receipt therefor; said receipt shall contain name of the claim given in notice filed and date of location thereof, stating the day and hour such certificate of location was filed.[39]

§ 833. **Receipt prima facie evidence.** The receipt called for in section one of this act shall be prima facie evidence that the certificate of location has been duly filed, and the date of filing.[40]

§ 834. **Mining recorder's seal.** Each district mining recorder shall provide a seal on which shall be engraved the name of the mining district, the county and state, with which said seal he shall authenticate all of his official acts, which seal, together with his official documents and books, shall not be liable to be seized on execution.[41]

§ 835. **Mining recorders notified by county recorders.** It shall be the duty of the several county recorders, within ten days after the passage of this act, to notify each of the several district mining recorders in their respective counties

[38] Nev. Comp. Laws, § 247, 4, as amended Stats. 1897, p. 77.
[39] Nev. Stats. 1907, p. 193, § 1, in force April 1, 1907.
[40] Id., § 2.
[41] Id., § 3.

of the passage of this act, which shall take effect on and after the first day of April, 1907.[42]

§ 836. **Same. Penalty.** Any mining district recorder or county recorder neglecting or refusing to comply with the provisions of this act shall be deemed guilty of misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred ($500) dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.[43]

§ 837. **Land granted to and selected by the state. Exploration and appropriation.** The several grants made by the United States to the state of Nevada reserved the mineral lands. Sales of such lands made by the state were made subject to such reservation. Any citizen of the United States, or person having declared his intention to become such, may enter upon any mineral lands in this state, notwithstanding the state's selection, and explore for gold, silver, copper, lead, cinnabar, or other valuable mineral, and upon the discovery of such valuable mineral may work and mine the same in pursuance of the local rules and regulations of the miners and the laws of the United States; provided, that after a person who has purchased land from the state has made valuable improvements thereon, such improvements shall not be taken or injured without full compensation. But such improvement may be condemned for the uses and purposes of mining in like manner as private property is by law condemned and taken for public use. Mining for gold, silver, copper, lead, cinnabar, and other valuable minerals, is the paramount interest of this state, and is hereby declared to be a public use.[44]

§ 838. **State disclaiming interest in mineral lands.** Every contract, patent or deed hereafter made by this state or the authorized agents thereof, shall contain a provision expressly reserving all mines of gold, silver, copper, lead, cinnabar

[42] Nev. Stats. 1907, p. 193, § 4.
[43] Id., § 5.
[44] Nev. Comp. Laws, § 281, 1

and other valuable minerals that may exist in such land, and the state for itself, and its grantees, hereby disclaims any interest in mineral lands heretofore or hereafter selected by the state on account of any grant from the United States. All persons desiring titles to mines upon lands which have been selected by the state must obtain such title from the United States under the laws of Congress, notwithstanding such selection.[45]

§ 839. **Prospector may enter on private land.** Any person, a citizen of the United States, may enter upon any unfenced and unimproved land in the state of Nevada held in private ownership, excepting mining claims and mining property already located or occupied for mining purposes, and may prospect thereon for gold, silver or other valuable minerals or metals, being responsible to the owner of the land for all damage done thereon.[46]

§ 840. **May locate mineral deposit. How.** Any person, a citizen of the United States, discovering a ledge or deposit containing gold, silver or other valuable mineral or metals in or upon any unfenced and unimproved land in this state held in private ownership, excepting mining claims or mining property already located or occupied for mining purposes, may locate such ledge or deposit, in accordance with the laws of the United States and of this state in respect to the location of mining claims, the same as though such ledge or deposit was found upon the public domain, and may acquire title to such land so located by means of the special proceedings prescribed in this act. The said special proceedings shall be substantially as follows: There shall be filed in the clerk's office of the district court in the county where the real estate is situated a petition verified according to law, stating therein the names of the person or persons presenting the petition; that he or they have discovered a ledge or deposit containing gold, silver, or some other valuable mineral or metal; the description by metes and bounds, or

[45] Nev. Comp. Laws, § 282, 2, as amended Stats. 1897, p. 36.
[46] Nev. Stats. 1907, ch. 65, § 1, p. 140.

by some other accurate designation of the tract or tracts of land, located in the manner of mining claims as herein provided and desired to be appropriated for mining purposes; that said land is more valuable for mining purposes than the purpose for which the same is being held; the names of those in possession of said land, and those claiming any right, title or interest therein, so far as the same can be obtained by reasonable diligence.[47]

§ 841. **Method of proceeding prescribed.** That the proceedings following the filing of such petition shall be as prescribed in that certain act of the legislature of this state entitled "An act to encourage the mining, milling, smelting or other reduction of ores in the state of Nevada," approved March 1, 1875, in so far as the same are not inconsistent with the provisions of this act.[48]

§ 842. **Title. How acquired.** If upon the hearing of the petition filed as provided in this act it appears to the satisfaction of the court or judge thereof that the land in question is more valuable for mining than the purpose for which the same is being used, then the petitioner or petitioners shall acquire title thereto in manner similar to that prescribed in the act to which this act is supplementary.[49]

§ 843. **Basis for determining value.** In determining the value of the land as a basis for the compensation which the petitioner or petitioners shall pay to the owners thereof, the minerals therein contained shall not be considered as going to make up the value, but the value which shall govern is the reasonable value of the land for the use for which the same has previously been put, or reasonably might be expected to be put in the future, by the owners thereof.[50]

§ 844. **False dating of location-notices forbidden.** On and after the first day of April, 1907, it shall be unlawful

[47] Nev. Stats. 1907, ch. 65, p. 140, § 2.
[48] Id., § 3.
[49] Id., § 4.
[50] Id., § 5.

for any person to antedate or to put any false date, or date other than the one on which the location is made, upon any notice of location of any mining claim in the state of Nevada.[51]

§ 845. **Same. Penalty for false dating.** Any person violating the provisions of this act shall be deemed guilty of a felony, and upon conviction therefor, shall be imprisoned in the state prison for not less than three nor more than ten years.[52]

§ 846. **Grub-stake contracts to be recorded.** All grub-stake contracts and prospecting agreements hereafter entered into, and which may in any way affect the title of mining locations, or other locations under the mining laws of this state, shall be void and of no effect, except between the parties to said contract or agreement, unless the instrument shall first have been recorded in the office of the county recorder of the county in which said instrument is made. The instrument or instruments shall be duly acknowledged before a notary public or other person competent to take acknowledgments. Grub-stake contracts and prospecting agreements, duly acknowledged and recorded as provided for in this act, shall be prima facie evidence in all courts of justice in this state in all cases wherein the title to mining locations and other locations under the mining laws of this state are in dispute.[53]

[51] Nev. Stats. 1907, p. 373, § 1.
[52] Id., § 2.
[53] Nev. Stats. 1907, ch. 174, p. 370.

CHAPTER XVII.

STATE AND TERRITORIAL STATUTES. NEVADA (CONTINUED).

General Corporation Laws.

§ 847. Introductory.
§ 848. Purposes for which corporations may be formed.
§ 849. Companies operating out of the state.
§ 850. Formation of corporation. How accomplished.
§ 851. What articles or certificate shall set forth.
§ 852. When corporate existence begins.
§ 853. Evidence of incorporation.
§ 854. Powers.
§ 855. Banking powers denied.
§ 856. Additional powers.
§ 857. Preferred and other special stocks.
§ 858. Rights may be given creditors to vote, or inspect books, etc.
§ 859. First meeting.
§ 860. First meeting for election of directors, etc.
§ 861. Meeting of stockholders, and principal office.
§ 862. Banks and corporations may act as resident agents.
§ 863. Name to be conspicuously displayed.
§ 864. Voting power of stockholders.
§ 865. Election to be by ballot.
§ 866. Qualification of directors.
§ 867. Cumulative voting.
§ 868. By-laws. How made.
§ 869. Officers.
§ 870. Meetings of directors, executive committee, quorum, etc.
§ 871. Vacancies by failure to elect trustees, or to qualify.
§ 872. Vacancies in board of directors.
§ 873. Revisory power of court.
§ 874. Stock personal estate. Transfer of. Married women may transfer, same as feme sole.
§ 875. Payment of subscribed capital stock.
§ 876. Sale for non-payment of calls, etc.
§ 877. When company may buy its stock.
§ 878. Stockholders liable until subscriptions are fully paid.
§ 879. Trustees not personally liable.
§ 880. Liabilities created by statutes of other states not to be enforced in this state.

§ 881. Filing certificate upon payment of capital.
§ 882. Penalty for neglect to file same after written demand.
§ 883. Conversion of preferred stock into bonds. Issue of bonds convertible into common stock.
§ 884. Incorporators may amend certificate of incorporation before payment of capital.
§ 885. Surviving incorporators may designate others for organization.
§ 886. Error and omission in certificate of incorporation cured by amendment.
§ 887. Amendment and changes after organization.
§ 888. Amendments by corporations formed under other acts.
§ 889. Method of decrease of capital stock.
§ 890. Merger.
§ 891. Agreement of mergers.
§ 892. Payment for stock of dissatisfied stockholders.
§ 893. Liability not affected by merger or decrease of capital.
§ 894. Bonds, etc. Power of consolidated company.
§ 895. Sale of franchise.
§ 896. Manner of sale.
§ 897. Forfeiture of charter for failure to commence business.
§ 898. Incorporation cannot by attacked collaterally.
§ 899. How sale of stock below par may be made.
§ 900. May issue stock for labor, or real property, or personal property.
§ 901. Stock so issued is paid.
§ 902. Certificate of stock.
§ 903. Exemption of stock held by non-residents.
§ 904. Voting-list of stockholders, and stock-ledger.
§ 905. Stock-ledger to determine who may vote. Proxies to be filed.
§ 906. Stock held by executors, etc. How voted.
§ 907. Pledge of stock, and voting power of pledgor.
§ 908. Treasury stock not be voted.
§ 909. Lost certificates.
§ 910. Proceedings in court to obtain new certificate.
§ 911. Security on transfer.
§ 912. Dividends.
§ 913. Subdividing capital stock.
§ 914. Capital stock not to be reduced, etc. Proviso.
§ 915. Removal of place of business without amendment.
§ 916. Filing copy of articles in other counties.
§ 917. Book for names of members. Stock-ledger.
§ 918. Information for creditor of stockholder.
§ 919. Publishing false statements a misdemeanor.
§ 920. Officers liable for damages caused thereby.
§ 921. Penalty for making false entry.

§ 922. Keeping fraudulent account a crime.
§ 923. Wilful destruction of books, making false entries, etc.
§ 924. Removal of directors.
§ 925. Proceedings for removal of officers in certain cases by majority vote in court.
§ 926. Proceedings to organize such meeting.
§ 927. Removal of officers or directors in certain cases, and election of new board in court by majority vote.
§ 928. The preceding sections optional with corporations hereafter formed.
§ 929. Incorporation need not be proven.
§ 930. Validating articles of incorporation.
§ 931. Report of election to secretary of state.
§ 932. Lien of employees.
§ 933. Service of legal process.
§ 934. Surrender of corporate rights before payment of capital stock.
§ 935. Dissolution of a corporation.
§ 936. Continuation of corporation after dissolution for purposes of suit, etc.
§ 937. Trustees after dissolution.
§ 938. Powers of trustees after dissolution of company.
§ 939. Appointment of receivers.
§ 940. Receiverships and dissolution by the court.
§ 941. Proceedings when a receiver is appointed.
§ 942. Sale of property and franchise.
§ 943. Sale of deteriorating property.
§ 944. Compensation of receivers.
§ 945. Corporations for mining purposes. Capital stock consisting of mining-ground.
§ 946. Mining corporations governed by district mining laws.
§ 947. Mining corporations may become stockholders, etc.
§ 948. Fees of secretary of state.
§ 949. The secretary of state to compile and publish, biennially, a list of corporations.
§ 950. Meaning of certain terms used in this act.
§ 951. Seal.
§ 952. Retaliatory taxation.
§ 953. Renewal of charters.
§ 954. Filing certificates and recording copy.
§ 955. Renewal.
§ 956. May hold stock, etc., of other corporations.
§ 957. Meetings held by consent without notice.
§ 958. Waiver.
§ 959. Amendment of this act.
§ 960. Repealing and continuing certain acts in force. Vested rights not impaired.

§ 961. Foreign corporations. To file legal copies of charter with secretary of state.
§ 962. Same. Fees as if organized in Nevada.
§ 963. Same. Penalty for neglect. Duties of state and county officers.
§ 964. Same. Repeal.
§ 965. Same. Foreign corporations and associations to make and keep agents in this state, upon whom all legal process may be served. Agent to reside in the state.
§ 966. Same. Serving of process.
§ 967. Same. Penalty for failure to appoint agent.
§ 968. Same. To publish annual statements.
§ 969. Same. Statement filed with each county assessor.
§ 970. Same. Penalty for neglect.
§ 971. Same. Any district attorney can commence suit.
§ 972. Same. Repealing clause.
§ 973. Right of eminent domain granted to foreign corporations.

§ 847. **Introductory.** The following is a verbatim copy of the general incorporation law of the state of Nevada, adopted and in force March 16, 1903, with the amendments to same passed in 1905 and 1907. The act itself will be found from pages 121 to 163, inclusive, Statutes of Nevada, 1903, and, except where we have specifically referred to the amendments for the sections herein, all the other sections will be found between the above-mentioned pages.

§ 848. **Purposes for which corporations may be formed.** Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of and subject to the requirements of this act as hereinafter provided; except to carry on within this state, an insurance business or that of a surety company or that of a railroad company, other than a street-railroad.[1]

§ 849. **Companies operating out of the state.** Notwithstanding the exceptions in the preceding section of this act, a corporation may be incorporated under this act to transact the business of an insurance company, life, fire, marine or

[1] Nev. Stats. 1903, p. 121, § 1.

accident or other form of insurance or of a surety company or of a railroad company, or for other cognate or other like purposes, to operate wholly without this state and may unite the powers to conduct such business without this state, with any powers which it is authorized to exercise without or within this state; provided, such corporation do not infringe the laws of such other state or country, as it may intend to transact business in, by so incorporating under this act.[2]

§ 850. **Formation of corporation. How accomplished.** All the persons who desire to form a corporation for any one or more of the purposes specified in this act shall make, sign and acknowledge before some person competent to take the acknowledgment of deeds, and file and have recorded in a book provided for that purpose, in the office of the clerk of the county in which the principal place of business for the company is intended to be located, articles of incorporation, or a certificate of incorporation, and file a certified copy, under the hand of the clerk and the seal of said county, in the office of the secretary of state, of said articles, or certificate of incorporation.[3]

§ 851. **What articles or certificate shall set forth.** 1. The name of the corporation (which name shall end with the word "incorporated," or shall contain one of the following words, used therein as a substantive or noun, "association," "company," "corporation," "club," "society," or "syndicate") and shall be such as to distinguish it from any other formed or incorporated in this state or engaged in the same business, or promoting or carrying on the same objects or purposes in this state.

2. The name of the county and of the city or town and of the place within the county, city or town, in which its principal office or place of business is to be located in this state (giving street and number if practicable), and if not, so described as to be easily located within the said county,

[2] Nev. Stats. 1903, p. 121, § 2. [3] Nev. Stats. 1905, p. 73, § 3.

city or town, the secretary of state shall refuse to issue his certificate until such location is marked and established.

3. The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on by the corporation.

4. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars; the number of shares into which the same is divided, and the par value of each share; the amount of subscribed capital stock with which it will commence business, which shall not be less than one thousand dollars; the amount actually subscribed and the amount actually paid up if any; and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes with the terms on which the respective classes of stock are created, and the amount of each class subscribed and the amount paid thereon; provided, however, that the provisions of this paragraph shall not apply to corporations not for profit, for which it is desired to have no capital stock; in case any such corporation desires to have no capital stock, it shall be so stated, and the conditions of membership shall be also stated.

5. The names of each of the original subscribers to the capital stock and the amount subscribed by each, or if there be no stock, of the original incorporators.

6. The period, if any, limited for the duration of its existence.

7. Whether the members of its governing board shall be styled directors or trustees of the corporation and the number of such trustees or directors, which shall not be less than three.

8. Whether or not capital stock, after the amount of the subscription price or par value has been paid in, shall be subject to assessment to pay debts of the corporation, and, unless provision is made in such original certificate or articles of incorporation for assessment upon paid-up stock, no paid-up stock and no stock issued as fully paid up shall ever be assessable or assessed, and the articles of incorporation shall not be amended in this particular.

9. The certificate of articles of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation and the rights, powers or duties of the directors, the stockholders, or any classes of the stockholders, or holders of the bonds or other obligations of the corporation, or providing for governing the distribution or division of the profits of the said corporation: provided, such provisions are not contrary to the laws of this state.[4]

§ 852. **When corporate existence begins.** Upon making the certificate or articles of incorporation and causing the same to be filed and recorded as aforesaid, and paying the fees therefor the secretary of state must issue to the corporation a certificate that a copy of the articles containing the required statement of facts has been filed in his office and thereupon the persons so associating, their successors and assigns, shall from the date of such certificate be and constitute a body corporate, by the name set forth in said certificate or articles, subject to dissolution as in this act sewhere provided.[5]

§ 853. **Evidence of incorporation.** A copy of any certificate or articles of incorporation, filed in pursuance of this act, and certified by the county clerk of the county in which it is filed or a copy of the copy filed with the secretary of state certified by him or said certificate, issued by the secretary of state pursuant to section 5 of this act shall be received in all courts and places as prima facie evidence of the facts therein stated, and of the existence and due incorporation of said corporation therein named.[6]

§ 854. **Powers.** Every corporation created under the provisions of this act shall have power:

[4] Nev. Stats. 1903, § 4, as amended 1905, pp. 73, 74.
[5] Nev. Stats. 1903, p. 123, § 5.
[6] Nev. Stats. 1903, p. 123, § 6.

1. To have succession, by its corporate name, for the time stated in its certificate or articles of incorporation, and when no period is limited, perpetually or until dissolved and its affairs wound up according to law.

2. To sue and be sued, complain and defend in any court of law or equity.

3. To make and use a common seal and alter the same at pleasure.

4. To hold, purchase and convey real and personal estate, and to mortgage any such real and personal estate, with its franchises; the power to hold real and personal estate, except in the case of religious corporations, shall include the power to take the same by devise or bequest in this state or in any other state, territory or country.

5. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation.

6. To require of them such security as may be thought proper for the fulfilment of their duties, and to remove them at will.

7. To make by-laws not inconsistent with the constitution or laws of the United States or of this state, fixing and altering the number of its directors or trustees, providing for their election and removal or for the management of its property, the regulation and government of its affairs, and for the certification and transfer of its stock, and to provide suitable penalties for a breach thereof not exceeding $25 in any one case.

8. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned.

9. To conduct business in this state, other states, the District of Columbia, the territories, districts, dependencies and colonies of the United States and in foreign countries, and have one or more officers out of this state, and to buy or otherwise obtain, hold, purchase, mortgage and convey real and personal property within or out of this state, to issue its bonds, debentures or other securities and hypothecate its franchises and property of any kind as security therefor.[7]

[7] Nev. Stats. 1903, p. 124, § 7.

§ 855. **Banking powers denied.** No corporation created under the provisions of this act, shall, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidences of debt for circulation as money, and nothing in this act shall be so construed as to authorize the formation of banking corporations for the purpose of issuing or circulating money or currency within this state or without the state or at all, except the Federal currency or the notes of banks authorized under the laws of the Congress of the United States, nor shall bank-notes or paper of any kind, be permitted to circulate as money in this state, other than the notes of banks authorized by the laws of the Congress of the United States.[8]

§ 856. **Additional powers.** In addition to the powers enumerated in this act, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this act, and the powers expressly given in its articles or certificate under which it was incorporated, so far as the same are necessary or convenient to the attainment of the objects set forth in such certificate or articles of incorporation; but shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.[9]

§ 857. **Preferred and other special stocks.** Every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof as shall be stated and expressed in the certificate or articles of incorporation or in any amendment or certificate of amendment thereof; and the power to increase or decrease the stock as in this act elsewhere pro-

[8] Nev. Stats. 1903, p. 124, § 8.
[9] Nev. Stats. 1903, p. 124, § 9.

vided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks issued and outstanding exceed two thirds of the capital stock paid for in cash or property, and such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon (but only out of the profits or property of said corporation) dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, not exceeding ten per centum per annum, payable quarterly, half-yearly or yearly; and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative; provided, the corporation shall set apart or pay the said dividends to the holders of non-cumulative preferred stock before any dividend shall be paid on the common stock; and in no event shall a holder of any class of stock be personally liable for the debts of the corporation nor for the payment of dividends; but in case of insolvency its debts and other liabilities shall be paid in preference to the preferred stock; the terms "general stock" and "common stock" are synonymous.[10]

§ 858. **Rights may be given creditors to vote, or inspect books, etc.** Every corporation, organized under and pursuant to the provisions of this act, or subject to its provisions, may make suitable provisions in its articles or certificate of incorporation, original or amended, and thereby to the extent, in the manner and subject to the conditions provided in the certificate or articles of incorporation confer upon the holders of any bond or debentures issued or to be issued by any such corporation, whether secured by mortgage or otherwise, the power to vote in respect to the corporate affairs and management of the company to the same extent and in the same manner as stockholders of the said corpora-

[10] Nev. Stats. 1903, pp. 124, 125, § 10.

tion, as may be provided in the certificate of incorporation and, in case of a default in the payment of the principal or interest on said bonds or otherwise, or in any other case, confer upon such bondholders the same right of inspection of the corporate books and accounts and records of any such company, and also any other rights, which the stockholders of the said company have or may have by reason of the provisions of the statutes or laws of this state or pursuant to the provisions of the certificate or articles of incorporation or the by-laws of the company.[11]

§ 859. **First meeting.** The first meeting of every corporation shall be called by a notice signed by a majority of the incorporators named in the certificate of incorporation, designating the time, place and purpose of the meeting; which may be within or without the state, and such notice shall, at least two weeks before the time of any such meeting, be published three times in some newspaper of the county where the corporation has its principal place of business; or said first meeting may be called without such or any publication of notice if two days' notice be personally served on all the parties named in the certificate of incorporation, and all stockholders, or if all the parties named in the certificate of incorporation and all who have become members or subscribed for stock therein, since its date, if any, waive notice in writing and fix a time and place of meeting which may be done in said certificate or articles of incorporation, or by a separate writing filed with the secretary or clerk of the corporation.[12]

§ 860. **First meeting for election of directors, etc.** At such first meeting directors or trustees shall be elected and any business specified in the notice thereof or in the written waiver of notice thereof may be transacted. Stockholders or members shall be entitled to vote at said meeting, and thereafter the said directors or trustees shall be elected at the

[11] Nev. Stats. 1903, pp. 125, 126, § 11.
[12] Nev. Stats. 1903, p. 126, § 12.

time and place within or without this state named in the by-laws, and which shall not be changed within sixty days next before the day on which the election is to be held. A notice of any change shall be given to each stockholder thirty days before the election is held, in person or by letter mailed to his last known post-office address. Until the directors or trustees are elected the incorporators shall have charge of the formation of the corporation and may take all steps necessary to obtain subscriptions and perfect the organization.[13]

§ 861. **Meeting of stockholders, and principal office.** That in all cases after the first meeting of the incorporators, where it is not otherwise provided by the by-laws, the meetings of the stockholders or members of every corporation shall be held at its principal office in this state. The stockholders and directors may, also, hold their meetings, and have an office or offices outside of this state, if the by-laws so provide: but every corporation shall maintain a principal office or place of business in this state and shall have an agent, resident of this state, in charge thereof, who shall at all times have the original or duplicate stock-ledger and a copy of its articles of incorporation and of all amendments thereto, and a copy of all by-laws adopted and in force in his office, for the use of parties interested or entitled to examine same.[14]

§ 862. **Banks and corporations may act as resident agents.** The resident agent provided for by section 14 of this act, may be any bank or banking corporation located and doing business in this state, or any corporation incorporated hereafter under the laws of this state, with authority to act as such agent, and any such bank and any such corporation shall have authority:

1. To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money.

[13] Nev. Stats. 1903, p. 126, § 13.
[14] Nev. Stats. 1903, pp. 126, 127, § 14.

2. To transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

3. To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

4. To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between said corporation and those dealing with it.[15]

§ 863. **Name to be conspicuously displayed.** Every corporation organized under this act shall have and maintain in a conspicuous place on its principal office required by section 14, in letters sufficiently large to be easily read, painted or printed, the corporate name of such corporation. And every such corporation which shall fail or refuse to comply with the requirements of section 14 and of this section, for a period of thirty days, or fail to maintain such office or fail to have a competent agent in charge thereof, on all business days of the year, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars, to be recovered with costs by the state before any court of competent jurisdiction by action at law, to be prosecuted by the attorney-general, or by the district attorney of the county in which such action or proceeding to recover such fine is prosecuted. Failure to comply with the requirements of this section for a period of ninety days, shall render the certificate issued by the secretary of state void, and the same can only be revived by a certificate from the governor issued for good and sufficient reasons for non-compliance.[16]

§ 864. **Voting power of stockholders.** Unless otherwise provided in the charter, the articles or certificate or by-laws of the corporation, each stockholder whether resident or non-resident, shall at every election be entitled to one vote in

[15] Nev. Stats. 1903, p. 127, § 15.
[16] Nev. Stats. 1907, p. 228, § 16.

person or by proxy for each share of the capital stock held by him; and each member of a corporation without capital stock to one vote, but no share of the stock shall be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election. No fractions less than one share shall be recognized in voting nor shall certificates be issued therefor. All proxies and powers of attorney to vote must be in writing and filed with the secretary.[17]

§ 865. **Election to be by ballot.** All elections of directors or trustees shall be by ballot unless otherwise provided in the charter or articles or certificate of incorporation, or in the by-laws.[18]

§ 866. **Qualification of directors.** The directors who may be called either directors or trustees, as determined by the articles or certificate of incorporation, shall, before entering upon the duties of their office respectively take and subscribe to an oath, as prescribed by the laws of this state, to perform their duties faithfully and observe and maintain the respect due said laws.[19]

§ 867. **Cumulative voting.** In all corporations heretofore formed and now existing and in all corporations formed under this act — unless otherwise provided in the certificate or articles of incorporation, original or amended — every stockholder shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are trustees to be elected, or to cumulate said shares and give one candidate as many votes as the number of trustees or directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such trustees or directors shall not be elected in any other manner; unless such method be set forth in said certificate or

[17] Nev. Stats. 1903, p. 127, § 17.
[18] Nev. Stats. 1903, p. 128, § 18.
[19] Nev. Stats. 1903, p. 128, § 19.

articles of incorporation or an amendment thereto. The person or persons receiving the greatest number of votes shall be director or directors, trustee or trustees. But a different plan or method of voting, limiting and regulating the mode of voting, may be prescribed in said certificate or articles of incorporation, original or amended, and when so prescribed shall be observed and shall govern.[20]

§ 868. **By-laws. How made.** The power to make and alter by-laws shall be in the stockholders or members, but any corporation may, in its articles or certificate of incorporation, original or amended, or by resolution adopted by a two-thirds vote, or by written consent of two thirds of the stock, or the holders thereof, or two thirds of the members, confer that power upon the directors or trustees. By-laws made by the directors under power so conferred, may be altered or repealed by the directors or trustees, or by the stockholders or members. The written consent of the owners of two thirds of the stock or of two thirds of the members shall suffice to adopt, amend or repeal any by-law or by-laws. All by-laws in force must be copied legibly in a book called Book of By-Laws, kept at all times for inspection in the principal office. Until so copied, they shall not be effective nor in force.[21]

§ 869. **Officers.** Every corporation organized under this act shall have a president, secretary and treasurer, who shall be chosen either by the directors or trustees or stockholders, as the by-laws may direct, and shall hold their respective offices until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty; and shall record all the acts and votes of the corporation and its members or stockholders, trustees or directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer shall give bond

[20] Nev. Stats. 1903, p. 128, § 20.
[21] Nev. Stats. 1903, p. 128, § 21.

in such sum, and with such surety or sureties, as shall be required by the by-laws, for the faithful discharge of his duty. The corporation may have such other officers, agents and factors, who shall be chosen in such manner and hold their office for such terms as may be prescribed by the by-laws.[22]

§ 870. **Meetings of directors, executive committee, quorum, etc.** The board of directors or trustees may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, who, to the extent provided in the by-laws of said company, and until a change occurs in said board shall have and exercise the powers of the board of directors or trustees in the management of the business and affairs of the company and may have the power to authorize the seal of the company to be affixed to all papers which may require it, except as modified by the above provisions. A majority of the whole number of trustees or directors shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act, subject to the provisions of the by-laws and of the laws of this state. The board of directors shall hold meetings at such times and places inside or outside of the state and upon such notice as it may prescribe or determine; and the by-laws may provide that any action of a majority, although not as [at] a regularly called meeting, and the record thereof, if assented to in writing by all the other members of the board, shall always be as valid and effective in all respects as if passed by the board in regular meeting.[23]

§ 871. **Vacancies by failure to elect trustees, or to qualify.** If it shall happen, at any time, that an election of trustees or directors shall not be held on the day designated by the by-laws of the company, or otherwise fixed, the corporation shall not for that reason be dissolved, but it shall be lawful,

[22] Nev. Stats. 1903, p. 129, § 22.
[23] Nev. Stats. 1903, p. 129, § 23.

on any other day, to hold an election for trustees or directors in such manner as shall be provided for by law, or statute or in the by-laws of the company, and all acts of the trustees or directors shall be valid and binding on the company until their successors shall be elected. When a majority of any newly elected board of trustees or directors shall fail to qualify and file in the office of the company their oath of office, within thirty days from the day of their election, it shall be the duty of any officer of the company upon the request of owners in said company representing not less than one third of the capital stock of the corporation owned in the company, to call a meeting of the stockholders of said company, which meeting when assembled shall have power to elect trustees or directors to supply the place of those who have failed to qualify; but such trustees or directors may qualify and enter upon the duties of their office at any time after the said thirty days, if such meeting for a new election shall not have been called. Whenever a majority of the trustees or directors elected have qualified by taking the oath of office, and one or more of the remaining trustees or directors elected shall fail to qualify within thirty days after their election, then the board of trustees shall fill the vacancy caused by failure to qualify by appointment.[24]

§ 872. **Vacancies in board of directors.** Any vacancy occurring among the directors or in the office of president, secretary or treasurer by death, resignation, removal or otherwise, except a vacancy caused by the removal of a director pursuant to this act, shall be filled in the manner provided for in the by-laws; in the absence of such provision such vacancies shall be filled by the board of directors; but directors or trustees so appointed shall hold only until their places are filled by an election by stockholders or members.[25]

§ 873. **Revisory power of court.** The district court of the district wherein said corporation has its principal office

[24] Nev. Stats. 1903, pp. 129, 130, § 24.
[25] Nev. Stats. 1903, p. 130, § 25.

upon application of any party who may be aggrieved by or complain of any election or any proceeding, act or matter in or touching the same, ten days' notice having been given to the adverse party or to those who are affected thereby of such intended application, shall proceed forthwith at chambers in any county in the district where the corporation has its principal place of business to hear proofs, affidavits and allegations of the parties, or otherwise inquire into the said matter of cause of complaint and either thereupon establish the election so complained of or order a new election or make such order and give such relief in the premises as right and justice may require, and the judge of said court may also, if any election for directors or trustees is not held on the day designated by law or in the by-laws, order an election to be held on petition of any stockholder, and may punish the officers and directors of said corporation for failure or refusal to obey said order as for a contempt of court.[26]

§ 874. Stock personal estate. Transfer of. Married women may transfer same as feme sole. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, the stock of the company shall be deemed personal estate. Such shares may be transferred by indorsement and delivery of the certificate thereof, such indorsement being by the signature of the proprietor, or his or her attorney, appointed by written power, or legal representative duly authorized; but such transfer shall not be valid except between the parties thereto, until the same shall have been so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer, and the old certificate surrendered and canceled, which must be done in all cases, except in case of loss or destruction of original, before a new one issue. In all cases in which shares of stock in corporations now existing, or hereafter incorporated under any law of this state, are held or owned by a married woman, such shares may be transferred by her, her agent or attorney, authorized by

[26] Nev. Stats. 1903, pp. 130, 131, § 26.

writing, without the signature of her husband, in the same manner, as if such married woman were a feme sole. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent, or attorney, in the same manner as if she were unmarried. And it shall not be necessary for her husband to join in receipt therefor; and any proxy or power given by a married woman, touching any share of stock of any corporation owned by her, shall be valid and be binding, without the signature of her husband, the same as if she were unmarried.[27]

§ 875. **Payment of subscribed capital stock.** The stockholders of any corporation formed under this act, may in the by-laws of the company prescribe the times, manners and amounts in which the payment of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees or directors shall have power to demand and call in from the stockholders the sums by them subscribed, at such times and in such manner, payments, or instalments, as they may deem proper. The trustees shall also have power at such times and in such amount, as they may from time to time deem the interest of the corporation to require, to levy and collect assessments upon the capital stock of the corporation, as herein provided, but not upon stock issued as paid up unless so specified and provided in the original certificate or articles of incorporation, which shall not be amended in this respect. Notice of each assessment or call shall be given to the stockholders personally, or by publication once a week for at least four weeks, in some newspaper published in the county in which the principal office or place of business of the company is located, and in a newspaper published in the county wherein the property of the company or corporation is situated if in this state, and if no paper be published in either of such counties, then the newspaper published nearest to the said principal place of business in the state.[28]

[27] Nev. Stats. 1903, p. 131, § 27.
[28] Nev. Stats. 1903, pp. 131, 132, § 28.

§ 876. **Sale for non-payment of calls, etc.** If after such notice has been given, any stockholder shall make default in the payment of the call or assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the call or amount of subscribed capital called in or the assessment upon all the shares held by him, her or them, together with all costs of advertising and expenses of sale. The sale of said shares shall be made at the office of the company at public auction to the highest bidder, after a notice thereof published for four weeks, as above in this section directed, and a copy of such notice mailed to each delinquent stockholder if his address is known four weeks before such sale, and at such sale the person who shall pay the call or assessment so due, together with the expenses of advertising and sale, for the smallest number of shares, or portion of a share, as the case may be, shall be deemed the highest bidder.[29]

§ 877. **When company may buy its stock.** Every corporation in this state shall also have the power, whenever at any assessment sale of the stock of said corporation or sale for unpaid subscription or call no person will take the stock and pay the assessment, or amount unpaid and due thereon and costs, to purchase such stock and hold the same for the benefit of the corporation. All purchases of its own stock by any corporation in this state which have been previously made at assessment sales whereat outside parties have failed to bid, and which purchases were for the amount of assessments due, and costs or otherwise, shall be held valid, and as vesting the legal title to the same in said corporation. The stock so purchased shall be held subject to the control of the remaining stockholders, who may make such disposition of the same as they may deem fit. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase or otherwise, a majority of the remaining shares of stock in said corporation shall be held to be a majority of the shares of the stock in said in-

[29] Nev. Stats. 1903, p. 132, § 29.

corporated company, for all purposes of election or voting on any question before a stockholders' meeting.[30]

§ 878. **Stockholders liable until subscriptions are fully paid.** Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or its articles of incorporation, or such proportion of that sum as shall be required to satisfy such debts and obligations, but no more. No suit shall be brought against any director or stockholder for any debt of a corporation organized as aforesaid, of which he is such director or stockholder, until judgment be obtained therefor against such corporation and execution thereon returned unsatisfied.[31]

§ 879. **Trustees not personally liable.** No person holding stock in any corporation incorporated in this state as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally liable or subject to any liability as a stockholder in or of such corporation (provided the transfer and the books of the company show the nature of the transfer and that the said stock is held in such fiduciary capacity or as a pledge and as security merely), but the person pledging such stock shall be considered as holding and owning the same, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such fund would have been had he been living and competent to act and hold the stock in his own name.[32]

§ 880. **Liabilities created by statutes of other states not to be enforced in this state.** No action or proceeding shall

[30] Nev. Stats. 1903, p. 132, § 30.
[31] Nev. Stats. 1903, p. 132, § 31.
[32] Nev. Stats. 1903, p. 132, § 32.

be maintained by any creditor of any corporation, nor by said corporation, nor by any other party or person in any court of this state against any stockholder, officer or director of any domestic corporation for the purpose of enforcing any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of the United States or of any other state, territory, colony or foreign country.[33]

§ 881. **Filing certificate upon payment of capital.** Provision relating to, repealed.[34]

§ 882. **Penalty for neglect to file same after written demand.** Provision relating to, repealed.[35]

§ 883. **Conversion of preferred stock into bonds. Issue of bonds convertible into common stock.** With the consent of two thirds in interest of each class of the stockholders present in person or by proxy at a meeting called in the manner provided in section 40 of this act, every corporation organized under this act, that shall have issued preferred stock, entitling the holders thereof to receive dividends at a rate exceeding seven per centum per annum, and that shall have continuously declared and paid dividends at such rate, on such preferred stock for the period of at least one year next preceding the meeting, and whose floating or unfunded debt at the time of the stockholders' meeting shall, in the certificate thereof filed with the secretary of state, be certified not to exceed ten per centum of the par amount of the preferred stock then outstanding, and whose assets at such time, after deducting the amount of its indebtedness, shall be certified, in the judgment of the officers making such certificate, to be at least equal to the amount of pre-

[33] Nev. Stats. 1903, p. 133. § 33.
[34] Nev. Stats. 1905, p. 75.
[35] Nev. Stats. 1905, p. 75.

ferred stock issued and outstanding, may, with the consent of the holders of any such preferred stock, redeem and retire the preferred stock of such holder, out of bonds or out of proceeds of bonds of the corporation, bearing interest at a rate not exceeding seven per centum per annum, the principal of such bonds being made payable at a date not less than ten years from the date thereof; every corporation organized under this act may, from time to time, in the manner above provided, issue bonds, which, if therein so declared, shall be convertible at par at the option of the holder, into fully paid common stock of the corporation at par, within any period therein prescribed not less than two years from the issue thereof; and in such case the board of directors may authorize the issue of the common stock into which such bonds, by their terms, shall be convertible.[36]

§ 884. Incorporators may amend certificate of incorporation before payment of capital. It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to record with the clerk of the county in which its original certificate of incorporation was recorded, and file with the secretary of state, an amended certificate duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved as required for certificates of incorporation under this act, modifying, changing or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; provided, however, that nothing herein shall permit the insertion of any matter not in conformity with this act; and, provided, however, that this act shall not in any manner affect any proceedings pending in any court, and for filing said amended certificate of incorporation, the secretary of state shall charge such fee as may be allowed by law.[37]

[36] Nev. Stats. 1903, p. 134, § 36. [37] Nev. Stats. 1903, p. 135, § 37.

§ 885. **Surviving incorporators may designate others for organization.** When one or more of the commissioners or incorporators of any corporation, created by or under this or any general or special act, shall have died before the corporation shall have been organized, pursuant to law, the survivors or survivor may in writing designate other persons who may take the place and act instead of those deceased, in the organization; and the organization so affected by their aid shall be as effectual in law as if it had been effected by all the original commissioners or incorporators.[38]

§ 886. **Error and omission in certificate of incorporation cured by amendment.** Whenever, in the certificate of articles of incorporation or organization of any corporation organized under any general act of the legislature of this state, there shall be any error or omission in the recital of the act under which said corporation is created, or mistake in or the omission of any other matter which is required or proper to be stated in said certificate, it shall and may be lawful for said corporation to correct such error in the manner following: The board of directors of such corporation shall pass a resolution declaring that such error exists and that said corporation desires to correct the same. A certificate of such action shall be made and signed by the president and secretary under the corporate seal; which said certificate shall be acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two thirds in interest of all the stockholders of said corporation, shall be filed in the office of secretary of state, and upon the filing thereof, the articles or certificate of incorporation or of organization shall be deemed to be corrected and amended accordingly, and the filing of said certificate in conformity with this act shall have the same force and effect as if said certificate or articles

[38] Nev. Stats. 1903, p. 135, § 38.

of incorporation or organization had been originally drafted in conformity with the amendment so made [39]

§ 887. **Amendment and changes after organization.** Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, change par value of the shares of its capital stock, decrease its capital stock, change the location of its principal office in this state, extend its corporate existence, change the number of its directors or trustees, create one or more classes of preferred stock and make such other amendment, change or alteration as may be desired, in manner following: The board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice, given personally or by mail, if two thirds in interest of each class of the stockholders having voting powers and of such other persons having like powers shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two thirds in interest of each class of such stockholders and creditors, if any, having voting powers, shall be filed in the office of the secretary of state, and upon the filing of the same and filing of a certified copy of said certificate of amendment with the county clerk of the county where the corporation has its principal office, the certificate or articles of incorporation shall be deemed to be amended accordingly; provided, that such certificate of amendment, change or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the secretary of state that such certificate and assent have

[39] Nev. Stats. 1903, p. 136, § 39.

been filed in his office shall be taken and accepted as evidence of such change or alteration in all courts and places; provided, also, that no amendment making or attempting to make paid-up stock issued as paid up or the holders thereof liable to assessment or for debts of the company shall be made.[40]

§ 888. **Amendments by corporations formed under other acts.** Any corporation of this state, whether organized under this act or by a special act of incorporation or under general laws, excepting railroad corporations, and other corporations possessing the right of taking and condemning lands, may increase or decrease its capital stock, change its name, the par value of the share of its capital stock or the location of its principal office in or out of this state, and fix any method of altering its by-laws permitted by this act in the manner prescribed in the foregoing section, and any corporation may in the same manner relinquish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation.[41]

§ 889. **Method of decrease of capital stock.** The decrease of capital may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every stockholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided, by amendment pursuant to this and the two preceding sections, the certificate decreasing the same shall be published for three weeks successively, at least once each week, in a newspaper published in the county in which the principal office of

[40] Nev Stats. 1903, p. 136, § 40.
[41] Nev. Stats. 1903, p. 137, § 41.

the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation [shall be jointly and severally liable for all debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; provided, no such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted.][42]

§ 890. **Merger.** Any two or more corporations organized under the provisions of this act, or existing under the laws of this state, for the purpose of carrying on any kind of business, may consolidate into a single corporation which may be either one of said consolidating corporations, or a new corporation to be formed by means of such consolidation; the directors or trustees, or a majority of them, of such corporation, as desire to consolidate, may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in articles of incorporation, as provided in this act, as well as the manner of converting the shares of such of the old corporations into the new, with such other details and provisions as are deemed necessary. Said agreement shall be submitted to the stockholders of each corporation, at a meeting thereof, called separately for the purpose of taking the same into consideration, of the time, place and object of which meeting due notice shall be given by publication at least once a week for four successive weeks in one or more newspapers published in the county wherein each corporation either has its principal office or conducts its business in this state, and a copy of such notice shall be mailed to the last known post-office address of each stockholder of each corporation, at least twenty days prior to the date of such

[42] Nev. Stats. 1903, p. 137, § 42.

meeting, and at said meeting said agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and if the votes of stockholders and others entitled to vote as stockholders of each corporation representing two thirds in amount of its capital stock and two thirds of the secured claims held by creditors entitled to vote as stockholders, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the secretary of each corporation, under the seal thereof, and the agreement so adopted and certified shall be signed by the president and secretary of each of said corporations under the corporate seals thereof and acknowledged by the president of each of such corporations before any officer authorized by the laws of this state to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations, and the agreement so certified and acknowledged shall be filed in the office of the secretary of state, and shall thence be taken and deemed to be the agreement and act of consolidation of said corporations, and a copy of said agreement and act of consolidation, duly certified by the secretary of state under the seal of his office, shall also be filed and recorded in the offices of the county clerks of the counties of this state in which the respective corporations so consolidated shall have their original charters or articles or certificates of incorporation recorded, or if any of the corporations shall have been specially created by a public act of the legislature, or shall have changed its place of business since its incorporation, then said agreement shall be filed and recorded in the county where such corporation shall have had its principal place of business, and such copy certified by the secretary of state as such record, or a certified copy thereof, shall be prima facie evidence of the existence of the corporation created by the said agreement, and of the observance and performance of all antecedent acts and conditions necessary to the creation thereof.[43]

[43] Nev. Stats. 1903, pp. 137-139, § 43.

§ 891. **Agreement of mergers.** When the agreement is signed, acknowledged, filed and recorded, as in the preceding section is required, the separate existence of the constituent corporations shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, wherever situate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; provided, that all rights of creditors, and all liens upon the property of either of said former corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.[44]

§ 892. **Payment for stock of dissatisfied stockholders.** If any stockholder in either corporation consolidating as aforesaid, who objected thereto in writing, shall within twenty days after the agreement of consolidation has been filed and recorded, as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the value of the stock at the date of consolidation; in

[44] Nev. Stats. 1903, p. 139, § 44.

case of disagreement as to the value thereof, it shall be ascertained by three disinterested persons, one of whom shall be chosen by the stockholder, one by the directors of the consolidated corporation, and the other by the two selected as aforesaid; and in case the said award is not paid within sixty days from the making thereof, and notice thereof given to said stockholder and said consolidated corporation, the amount of the award shall be evidence of the amount due by said corporation, and may be collected as other debts are by law collectible; on receiving payment of the award, said stockholder shall transfer his stock to the said consolidated corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders. If for any reason said award be not made, or be grossly unfair, either party may have an action in the district court to determine the value of the shares and effect the transfer thereof to the corporation on payment of such value.[45]

Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place, or the new corporation may be substituted in its place.[46]

§ 893. **Liability not affected by merger or decrease of capital.** The liability of corporations created under this act, or existing under the laws of this state, or the stockholders or officers thereof, or the right or remedies of the creditors thereof, or of persons doing or transacting business with such corporation, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation of two or more corporations, or by any change or amendment in the articles of incorporation.[47]

§ 894. **Bonds, etc. Power of consolidated company.** When two or more corporations are consolidated, the con-

[45] Nev. Stats. 1903, p. 139, § 45.
[46] Nev. Stats. 1903, pp. 139, 140, § 46.
[47] Nev. Stats. 1903, p. 140, § 47.

solidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all payments it will be required to make, or obligations it will be required to assume, in order to effect such consolidation; to secure the payment of which bonds and obligation it shall be lawful to mortgage its corporate franchise, rights, privileges and property, real, personal and mixed; and may issue capital stock to such an amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment for the original shares, in the manner and on the terms specified in the agreement of consolidation.[48]

§ 895. **Sale of franchise.** If the franchise and property of any corporation formed under the provisions of this act, or existing under the laws of this state is sold, the persons who may become the purchasers, at private sale or under the judgment of the court, may organize a corporation for the continuation, operation and management of the same; and such corporations, when organized, shall have the same rights, privileges and franchises as have been granted to, or acquired by, the corporation purchased; and shall be subject to all the limitations, restrictions and liabilities imposed on it; and, in addition thereto, shall be subject to all the provisions of this act. Such corporation shall be formed by a certificate or articles of incorporation executed by the purchaser and his associates, and which shall, in addition to the requirements of the provisions of this act, set forth the description of the property sold and the decree under which the sale was made, if it was sold under judgment or if not, the deed conveying the property; the amount paid or to be paid, and to whom and by whom, and such other statements as may be deemed necessary. The articles shall be signed by the purchaser and his associates, if any, and shall be filed in the office of the secretary of state, who shall furnish a certified

[48] Nev. Stats. 1903, p. 140, § 48.

copy of the same under his hand and seal of office, which shall be recorded as hereinbefore provided for the certificates of incorporation; and when a certificate of such fact is delivered to the purchaser the corporation shall be deemed to be organized, and shall have the rights, powers and privileges, and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this act.[49]

§ 396. **Manner of sale.** Sales of property and franchises of such corporations that may be sold under a decree of court shall be made after such notice of the time and place as the court may deem proper; and if such sales are made in the foreclosure of one or more mortgages, the court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such mortgage or mortgages, or if the property and franchise will produce so much, then for the amount of interest due under said mortgage or mortgages, subject to the payment by the purchaser of the outstanding bonds and interest secured thereby as they became due; and in the latter event may, by proper orders, secure the assumption thereof by the purchaser; but when a sale shall be ordered to be made, subject as aforesaid, the court shall direct the officer making such sale, in the event that the property and franchises offered do not sell for enough to pay the amount aforesaid, to sell the same free from encumbrances. Sales under this section shall be made on such credits as the court may deem proper.[50]

§ 397. **Forfeiture of charter for failure to commence business.** Any corporation organized under this act shall forfeit all rights, privileges and franchises obtained thereunder, if it shall fail, for two years after its incorporation, to organize and to commence in good faith the business, or to promote the objects or purposes for which it was organized.[51]

[49] Nev. Stats. 1903, pp. 140, 141, § 49.
[50] Nev. Stats. 1903, p. 141, § 50.
[51] Nev. Stats. 1903, p. 141, § 51.

§ 898. **Incorporation cannot be attacked collaterally.** The due incorporation of any company claiming in good faith to be a corporation pursuant to the laws of this state, and doing business as such, or its rights to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation may be a party. This section shall not be construed to prevent judicial inquiry into the regularity or invalidity of the incorporation or organization of the corporation, or its lawful possession of any corporate power it may undertake to assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts, is challenged by the state, or its officers authorized so to do, and evidence tending to sustain such challenge shall be admissible in any suit or proceeding.[52]

§ 899. **How sale of stock below par may be made.** Regulation repealed.[53]

§ 900. **May issue stock for labor, or real property, or personal property.** Any corporation existing under any law of this state may issue stock for labor done or personal property or real estate or leases thereof; in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive.[54]

§ 901. **Stock so issued is paid.** All stock so sold or so issued pursuant to sections 53 or 54 of this act shall be fully paid and not liable to any further call or assessment (and this shall be so stated on the face of the certificate). But it shall be the duty of the corporation to have its minutes or other permanent records to show, with reasonable detail, the items and character of property (and of the labor or services) for which any stock or bonds were so issued.[55]

[52] Nev. Stats. 1903, pp. 141, 142, § 52.
[53] Nev. Stats. 1905, p. 75.
[54] Nev. Stats. 1903, p. 142, § 54.
[55] Nev. Stats. 1903, p. 142, § 55.

§ 902. **Certificate of stock.** Every stockholder shall have a certificate under the seal of the corporation, signed by the president, or vice-president, and by the treasurer or secretary, certifying the total amount of capital stock, authorized, and the total number of shares, the par value, and the number of shares contained in the certificate, whether they are fully paid up and non-assessable or not, also give the location of the principal office, and the name of the resident agent.[56]

§ 903. **Exemption of stock held by non-residents.** The shares of stock in every corporation shall be deemed personal property and transferable on the books of the corporation in such manner and under such regulations as section 27 of this act require[s] and the by-laws provide; provided, however, that no stock or bonds issued by any corporation organized under this act shall be taxed by this state when the same shall be owned by non-residents of this state or by foreign corporations.[57]

§ 904. **Voting-list of stockholders, and stock-ledger.** After the first election of directors, where the by-laws or the certificate or articles of incorporation otherwise provide, no stock shall be voted on at any election of directors or trustees, or on any question submitted to stockholders at any meeting thereof, which shall have been transferred on the books of the company within twenty days next preceding such election, and it shall be the duty of the directors or trustees to cause the officer who shall have charge of the stock-ledger to prepare and make, at least ten days before every election, a complete list of stockholders entitled to vote, arranged in alphabetical order. Such list shall be open, at the place where said election is to be held for said ten days, to the examination of any stockholder, or party entitled to vote at such election, or their agents or proxies, and shall be produced and kept at the time and place

[56] Nev. Stats. 1903, § 56, as amended 1905, p. 75.
[57] Nev. Stats. 1903, p. 143, § 57.

of election during the whole time thereof, and subject to the inspection of any stockholder or party entitled to inspect the same who may be present. Upon the neglect or refusal of the said officers or of the directors or trustees to produce such list at any election, they shall be ineligible to any office at such election. The original or duplicate stock-ledger provided for in section 71 of this act and containing the names and addresses of the stockholders, and the number of shares held by them, respectively, shall, at all times, during the usual hours of business, be open to the examination of every stockholder at its principal office or place of business in this state, and said original or duplicate stock-ledger shall be evidence in all courts of this state. Such ledger shall be kept by all corporations, and either the original or duplicate shall always be kept open for inspection by stockholders or state officers, at the principal place of business of said corporation. If the duplicate is so kept, the original may be kept at any place the corporation may fix, within or without the state.[58]

§ 905. Stock-ledger to determine who may vote. Proxies to be filed. In case the right to vote upon any share of stock shall be questioned, the inspectors of the election shall refer to the stock-books of the corporation to ascertain who are the stockholders, and in case of a discrepancy between the books, the stock-ledger, if properly kept, shall control and determine who are entitled to vote. Proxies and powers of attorney to vote must (unless the by-laws or certificate or articles of incorporation otherwise provide) be filed with the secretary of the company twenty days before an election, or they cannot be used at such election.[59]

§ 906. Stock held by executors, etc. How voted. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, though standing in the

[58] Nev. Stats. 1903, p. 143, § 58.
[59] Nev. Stats. 1903, pp. 143, 144, § 59.

name of the beneficial owner on the books of the company, and may vote accordingly as a stockholder, or give proxies therefor.[60]

§ 907. **Pledge of stock, and voting power of pledgor.** Any stockholder may pledge his stock, by a delivery of the certificates, or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder. Persons holding stock pledged shall be entitled to vote the shares so held, if transferred to them and standing in their names, unless it appears on the books that the transfer is as security only and not absolute, or if in the transfer by the pledgor on the books of the corporation as security he shall expressly give to the pledgee power to vote thereon; in all other cases only the pledgor or his proxy may represent said stock and vote thereon. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer, on the books of the company.[61]

§ 908. **Treasury stock not to be voted.** Shares of stock of the corporation belonging to the corporation shall not be voted upon directly or indirectly.[62]

§ 909. **Lost certificates.** Every corporation may issue a new certificate of stock in place of any certificate claimed to be lost or destroyed, but the directors may require as a condition of such reissue that the owner or his successors in interest give a bond in a sum not exceeding double the value of the stock, but not less than $100, to indemnify the corporation against any claim that may be made on account of the issue of such new certificate.[63]

§ 910. **Proceedings in court to obtain new certificate.** The district court shall, for due cause shown upon complaint of the owner of a lost or destroyed certificate, order the

[60] Nev. Stats. 1903, p. 144, § 60.
[61] Nev. Stats. 1903, p. 144, § 61.
[62] Nev. Stats. 1903, p. 144, § 62.
[63] Nev. Stats. 1903, p. 144, § 63.

delivery to him by said directors of a new certificate in lieu thereof, and may require a proper bond in such amount as the court may fix for the protection of the corporation and of any person who may be interested in the lost or destroyed certificates.[64]

§ 911. **Security on transfer.** No share of stock shall be transferred without the consent of the directors until the same is fully paid up or security given to the satisfaction of the board for the residue remaining unpaid. And where bond or security have been given to the corporation for any sum remaining unpaid upon stock, no transfer shall affect the validity of such bond as security.[65]

§ 912. **Dividends.** The directors of every corporation created under this act shall have power, after reserving over and above its capital stock paid in such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits, in excess of the amount so reserved, and pay the same to such stockholders on demand; provided, that the corporation may, in its certificate of incorporation, or in its by-laws, give the directors power to fix the amount to be reserved.[66]

§ 913. **Subdividing capital stock.** All corporations organized and existing under the laws of this state, whether under this or prior act, desiring to divide the capital stock of the corporation into shares of smaller denomination than originally issued, thereby increasing the number of shares without changing the amount of the capital stock, may do so by a majority vote of the trustees of the corporation at any regular or called meeting of the trustees, without amending their articles or certificate of incorporation, and may issue the stock of such corporation in accordance therewith after having filed a certificate setting forth the amount of denomination into which they propose to divide such shares,

[64] Nev. Stats. 1903, pp. 144, 145, § 64.
[65] Nev. Stats. 1903, p. 145, § 65.
[66] Nev. Stats. 1903, p. 145, § 66.

verified by the affidavit of a majority of such trustees, in the office of the clerk of the county where such corporation has its principal place of business and a certified copy thereof in the office of the secretary of state.[67]

§ 914. **Capital stock not to be reduced, etc. Proviso.** It shall not be lawful for the trustees or directors to make any dividend except from the net profits arising from the business of the corporation; nor to divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this act, or in accordance with the provisions of the certificate or articles of incorporation; and in case of any violation of the provisions of this section, the directors or trustees under whose administration the same may have happened, except those who may have caused their dissent thereto to be entered at large on the minutes of the board of directors or trustees at the time, shall in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, to the full amount so divided, withdrawn or reduced, or paid out; provided, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain, after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter; provided, also, that this section shall not prevent the retirement or conversion of either stock or bonds or the distribution of the earnings or accumulations of the corporation as provided for in the articles or certificate of incorporation, original or amended.[68]

§ 915. **Removal of place of business without amendment.** Any corporation, now existing or hereafter to be formed, desiring at any time to change the location of its principal office, shall, after a resolution has been passed by its directors, members or stockholders, authorizing or directing such change or removal, file in the office of the secretary of

[67] Nev. Stats. 1903, p. 145, § 67.
[68] Nev. Stats. 1903, pp. 145, 146, § 68.

state and of the county clerk of the county where its principal office then is, and publish once a week for four weeks in the newspaper published nearest to the place from which said office is to be removed, a notice of such change, specifying particularly where the said office is to be located, the date when the change was or will be made, and the name of the resident agent to have charge of such office after such change. If it is desired to change the said office to some county other than the one in which the corporation then has its principal office, such a notice must also be filed in the office of the county clerk of the county to which the said office is to be removed, and unless such copies are already on file in said office, a certified copy of its original articles or certificate of incorporation, or of a copy or record thereof made and filed pursuant to this act, and certified copies of all amendments to such original articles must also be filed with said county clerk of the county to which it is proposed to remove. The notice of such change may be signed by any officer or director of the corporation. The formation or corporate acts of no corporation heretofore formed under this act, or any other act, shall be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation, and on compliance with the provisions of this section, in the several cases herein mentioned, or on filing of an amendment, under sections 40 and 41 of this act, the principal place of business of any corporation shall be deemed established or removed at or to any designated city, town, or locality or county in the state.[69]

§ 916. **Filing copy of articles in other counties.** Whenever the principal office of a corporation is changed from one county to another by amendment of its articles of incorporation, or otherwise, and whenever any corporation becomes the owner or lessee of any real property in any county other than that where it has its principal place of business, or whenever copies of its articles of incorporation and of all

[69] Nev. Stats. 1903, p. 146, § 69.

amendments thereto are not on file or of record in the office of the county clerk of the county where its principal office is situated, or where it owns, holds, leases, manages or controls any real property, such corporation must file in the office of the county clerk of such county to which its office is changed, or where it owns or holds any real property in this state, certified copies of its original articles of incorporation, or of the copy thereof filed with the secretary of state, and of each and every amendment thereto on file with the secretary of state, and no corporation shall maintain or defend any suit in such county till this is done, and, if the said corporation fails to cause said papers to be so filed, any person desiring for a lawful purpose to examine the same, may procure and file and record in said county clerk's office said papers or any of them not so filed theretofore, and may recover the expense thereof with the costs of suit in an action against such delinquent corporation.[70]

§ 917. **Book for names of members. Stock-ledger.** It shall be the duty of the trustees of every company incorporated in this state to keep a book containing the names and addresses of all persons, alphabetically arranged, who are or shall become members or stockholders of the corporation, or who may be entitled to vote at stockholders' meetings, and showing the number of shares of stock held, or other voting rights, if any, by them respectively, and the time when they became the owners of such shares; which book shall be kept in its principal office, during the usual business hours of the day, on every day except Sunday and the legal holidays, and shall be open for the inspection of stockholders of the company, at the principal office or principal place of business of the company; and any stockholder of the company may have the right to examine any books and papers of said corporation in said office and to demand and receive from the agent or officer having the charge of such a certified copy of any entry therein, on paying the actual cost of making such copy and such copy shall be presumptive and prima facie

[70] Nev. Stats. 1903, p. 147, § 70.

evidence in all actions against said corporation or any of its stockholders.[71]

§ 918. Information for creditor of stockholder. Every person having charge of the original or duplicate stock-books of any corporation shall, upon application of any person and upon presentation to him of a sworn affidavit on his behalf that he is a creditor of any stockholder, give him information as to the number of shares owned by said stockholder, and any person refusing to give such information shall forfeit to the party demanding such information the sum of $100, to be recovered in any court having jurisdiction.[72]

§ 919. Publishing false statements a misdemeanor. Any person who, being a director, manager or officer of any corporation or body corporate or company, shall make, circulate or publish, or concur in making, circulating or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of any such body corporate, corporation or company, or with intent to induce any person to become a shareholder therein, or to intrust or advance any property to such body corporate, corporation or company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor.[73]

§ 920. Officers liable for damages caused thereby. If the directors or officers of any corporation organized under the provisions of this act shall knowingly cause to be published, or given out, any written statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published, or given out, or assenting thereto, shall be jointly and severally individually liable for any loss or damage resulting therefrom.[74]

[71] Nev. Stats. 1903, p. 147, § 71.
[72] Nev. Stats. 1903, pp. 147, 148, § 72.
[73] Nev. Stats. 1903, p. 148, § 73.
[74] Nev. Stats. 1903, p. 148, § 74.

§ 921. **Penalty for making false entry.** If at any time the clerk, secretary, agent or other officer or employee having charge of any book required by this act to be kept, shall make any false entry therein, or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in section 71 of this act, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of one hundred dollars, and all damages resulting therefrom, to be rewarded [awarded] in an action for debt in any court having competent jurisdiction.[75]

§ 922. **Keeping fraudulent account a crime.** Any person who, being a director, trustee, officer or manager of any body corporate, corporation, or company, shall, as such, receive or possess himself of any of the property of such corporation, body corporate, or company, otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause, or to direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor.[76]

§ 923. **Wilful destruction of books, making false entries, etc.** Any person who, being a director, manager, officer or member of any corporation, body corporate or company, shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing, or valuable security belonging to the said corporation, body corporate or company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of accounts or other document belonging thereto, shall be guilty of a misdemeanor.[77]

§ 924. **Removal of directors.** Any director may be removed by a vote of two thirds of the members or the owners of two thirds of the stock, or by written consent thereto

[75] Nev. Stats. 1903, p. 148, § 75.
[76] Nev. Stats. 1903, pp. 148, 149, § 76.
[77] Nev. Stats. 1903, p. 149, § 77.

subscribed by two thirds of the members, or by the owners of two thirds of all stock outstanding and filed with the secretary of the company, and the by-laws may provide for removal by a vote or written consent of less than two thirds, but not by less than a majority of the members of the stock. Upon such removal, a vote of the stockholders or members to fill the vacancy shall at once be taken, or a meeting to take such vote called, and if not called promptly may be ordered by the district court, and the order enforced by punishing the officers and directors or trustees who fail to [or] refuse or comply therewith, as for a contempt, and the removal shall not take effect till such vacancy be so filled by vote of the stockholders or members, but such director so removed shall hold office until his successor is so elected by the members or stockholders and qualified.[78]

§ 925. **Proceedings for removal of officers in certain cases by majority vote in court.** On petition of the stockholders holding the majority of the stock actually issued by any corporation formed under this act, and subject to the provisions of this section, to the district judge of the district where said corporation has its actual place of business, verified by the signers, to the effect that they are severally the holders of the number of shares set opposite their signatures to the foregoing petition, the district judge shall issue his notice to the stockholders of said company that a meeting of the stockholders will be held at the court-room of the district court, in the county in which is said principal place of business, stating the time, not less than five, nor more than ten, days after the first publication of said notice, and the object to be taken into consideration, the removal of officers, directors or trustees of said company, which notice, signed by the said district judge, shall be published daily, in a daily newspaper published in said county, for at least five days before the time for the meeting; or, if there be no daily newspaper published in said county, then in such manner as the district judge shall direct.[79]

[78] Nev. Stats. 1903, p. 149, § 78.
[79] Nev. Stats. 1903, pp. 149, 150, § 79.

§ 926. **Proceedings to organize such meeting.** At the time appointed by said notice, the said district judge shall appoint a secretary of the meeting, and shall thereupon hear the proofs of those claiming to be stockholders in said corporation; and only those showing a right to vote, or their proxies, shall take part in the further proceedings. Said judge shall decide who are entitled to vote, in a summary way, and his decision shall be final. If it appears at the time appointed, or within one hour thereafter, that holders of less than one half the whole number of shares actually issued, or their proxies, are present, the meeting shall be dissolved; but, if the holders of more than one half of the shares actually issued, or their proxies, are present, they shall proceed to vote, the secretary calling the roll, which he shall prepare by setting down the names of persons held to be entitled to vote, and the number of shares held by each, and such persons voting yea or nay on the question of removal of one or more of the officers, directors or trustees of the company, specifying which one or more that the voters desire to remove, as the case may be. The secretary shall enter the same upon his list, and, when he has added up the list and stated the result, he shall sign the same and hand it to the judge, who shall declare the result.[80]

§ 927. **Removal of officers or directors in certain cases, and election of new board in court by majority vote.** If the result of the vote is that the holders of a majority of all the shares of the company actually issued, or their proxies, are in favor of the removal of one or more of the officers, directors or trustees of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the judge, who shall collect the ballots and deliver them to the secretary, who shall count the same in open session, and, having stated the result of the count, in writing, shall sign the same and hand it to the judge, who shall announce the result to the meeting. The judge shall thereupon issue to each person chosen a cer-

[80] Nev. Stats. 1903, p. 150, § 80.

tificate, stating that, from the date of such meeting until the next annual election, unless removed under provisions hereof, he is entitled to exercise and fill the office to which he is chosen; and shall indorse upon, or annex to, said petition a report of the proceedings of said meeting; and an order, requiring that all books, papers, and all property and effects of said corporation, be immediately delivered to the officers-elect, and shall sign the same and file it with the clerk of his court; and thereafter any disobedience to said order may be punished as other contempts of court, and disobedience thereto may be enforced by the court of said district. The district judge shall preside at said meeting, and put to vote such proper motions as he may be requested to submit to the meeting. In deciding any controverted question that may arise, he shall have the power to administer oaths and take testimony, either orally or by ex parte affidavits. For all the services in these proceedings the county clerk shall receive twenty dollars.[81]

§ 928. **The preceding sections optional with corporations hereafter formed.** All corporations heretofore formed under prior acts, their stockholders, trustees and officers, shall have the powers and be subject to the provisions in the three preceding sections contained providing for the removal and elections of new officers, directors or trustees by majority vote in court, and all corporations hereafter formed, renewed or continued under and pursuant to the provisions of this act, which shall in their articles or certificate of incorporation, original or amended, state that they desire to take advantage of such provisions, or of said three sections, or to be governed thereby, or to be subject thereto, or words to that effect, shall accordingly be themselves, their stockholders, directors, trustees and officers, vested with all the powers, and subject to and governed by all the provisions of the said three sections of this act next preceding, that is to say, sections Nos. 79, 80, and 81 of this act, but no others shall be subject thereto nor affected thereby.[82]

[81] Nev. Stats. 1903, pp. 150, 151, § 81.
[82] Nev. Stats. 1903, p. 151, § 82.

§ 929. **Incorporation need not be proven.** In all civil actions brought by or against a corporation it shall not be necessary to prove on the trial of the cause the existence of the corporation unless the defendant in his or its answer expressly aver that such plaintiff or defendant is not a corporation, and verify the same.[83]

§ 930. **Validating articles of incorporation.** All corporations organized under general laws in whose certificates or articles of incorporation there is any error or omission of any matter or thing required to be therein stated, or which are defectively executed or acknowledged or certified or in which some of the informality or irregularity exists, are hereby declared to be corporations from the time of filing such certificate or articles, in the same manner and to the same effect and intent as if the same were without fault.[84]

§ 931. **Report of election to secretary of state.** Every corporation incorporated or authorized to transact business in this state shall, within thirty days after every and any corporate act which makes any change in the board of directors or trustees, file in the office of the secretary of state a statement authenticated by the signature of the president and secretary and verified by each of them, giving the names of all the directors or trustees and officers, with the date of election or appointment of each, term of office, residence and post-office address of each, character of his business, location (giving also street and number if practicable) of its principal office in this state, and the name of the resident agent in this state, in charge of said office and upon whom process can be served, and every corporation failing so to do for thirty days shall forfeit to the state $100.[85]

§ 932. **Lien of employees.** Whenever any corporation formed under the provisions of this act and prior acts shall become insolvent or be dissolved in any way, or for any

[83] Nev. Stats. 1903, p. 151, § 83.
[84] Nev. Stats. 1903, p. 151, § 84.
[85] Nev. Stats. 1903, § 85, as amended 1905, pp. 75, 76.

cause, the employees doing labor or service of whatever character in the regular employ of such corporation, shall have a lien upon the assets thereof for the amount of wages due to them, not exceeding two months' wages respectively, which shall be paid prior to any other debt or debts of said corporation; but the word "employees" shall not be construed to include any of the officers of such corporation.[86]

§ 933. **Service of legal process.** Services of legal process upon any corporation created under this act or subject to its provisions shall be made by delivering a copy thereof personally to the president, cashier, secretary or resident agent of such corporation, or by leaving the same at the principal office or place of business of the corporation in this state. Service by copy left at the said principal office or place of business in this state, to be effective, must be delivered thereat at least thirty days before the return of the process, and in the presence of an adult person; and the officer serving the process shall distinctly state the manner of service in his return thereto, naming such person; provided, that process returnable forthwith must be served personally.[87]

§ 934. **Surrender of corporate rights before payment of capital stock.** Before the payment of any part of the capital (stock) other than that paid in before filing articles or certificate of incorporation and before beginning business for which the corporation was created, the incorporators named in any certificate or articles of incorporation may surrender all their corporate rights and franchises, by filing in the office of the secretary of state, a certificate executed and acknowledged by all, and verified by the oath or affirmation of a majority of the said incorporators, that no part of the capital has been paid since filing articles of incorporation, and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved.[88]

[86] Nev. Stats. 1903, p. 152, § 86.
[87] Nev. Stats. 1903, p. 152, § 87.
[88] Nev Stats. 1903, pp. 152, 153. § 88.

§ 935. **Dissolution of a corporation.** If it should be deemed advisable, in the judgment of the board of directors, or trustees, and most for the benefit of any corporation organized under this act, and prior acts, that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution and of the time and place of the meeting of stockholders called to take action thereon, to be mailed to each stockholder and creditor having a right to vote with the stockholder, and also, beginning within said ten days, cause to be inserted in a newspaper published in the county wherein the corporation shall have its principal office, and also in the county, or city and county, where said stockholders' meeting is to be held, at least four weeks successively, once a week, next preceding the time appointed for such meeting a like notice of said resolution and of such meeting of the stockholders to take action upon the resolution so adopted by the board of directors, or trustees, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, by consent of a majority in interest of the stockholders present, be adjourned from time to time, of which adjournment notice by advertisement in the same newspapers shall be given; and if at any such meeting or adjourned meetings two thirds in interest of all the stockholders or two thirds in interest of any class of creditors entitled to vote at such meeting shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and secretary and treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the corporation shall thereby be dissolved, and the secretary

of state shall make an indorsement to that effect on the original certificate of incorporation and on the amendments thereto in his office. Whenever nine tenths in interest of the stockholders and nine tenths in interest of any class of secured creditors entitled to vote with stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent, duly acknowledged or proven, in the office of the secretary of state, he shall forthwith issue a certificate of dissolution, as above provided.[89]

§ 936. **Continuation of corporation after dissolution for purposes of suit, etc.** All corporations, whether they expire by limitation, or are otherwise dissolved, shall nevertheless be continued as bodies corporate, for the term of one year from such expiration or dissolution, and until all litigation to which such corporation is a party, if begun within that time and process served within said year, is ended, for the purpose of prosecuting and defending suits by or against them, begun within said time, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established. A majority in interest of the stockholders by resolution or by written consent, filed with the secretary of state, may extend this time not exceeding three years in all.[90]

§ 937. **Trustees after dissolution.** Upon the dissolution of any corporation under the provisions of section 89 of this act, or its expiration by limitation of time, the directors, or the governing body, by whatever name it may be known, shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell, and convey the property, real and personal, and divide the moneys and other property among the stockholders, after paying its debts.[91]

[89] Nev. Stats. 1903, p. 153, § 89.
[90] Nev. Stats. 1903, p. 154, § 90.
[91] Nev Stats. 1903, p. 154, § 91.

§ 938. **Powers of trustees after dissolution of company.** Upon the dissolution or expiration of the time limited for the existence of any corporation formed under the laws of this state the directors or trustees at the time of the dissolution shall be trustees to and for the creditors and stockholders of the corporation dissolved, and shall have power and authority to sue for and recover the debts and property of the corporation, in the name of said corporation or by the name of trustees of such corporation, to collect and pay the outstanding debts, settle all its affairs, and divide among the members or stockholders entitled thereto the money and other property that shall remain after the payment of the debts and necessary expenses. Any creditor of a corporation dissolved without decree of court, if said dissolution be in fraud of his rights, may unite with any action to enforce his debt and action to set aside such dissolution, and on proof thereof have such orders and decree as shall afford him complete relief in such action, but such dissolution shall not extend the period limited by law for the enforcement of such creditor's claim or demand.[92]

§ 939. **Appointment of receivers.** When any corporation organized under this act shall be dissolved in any manner whatever, or expire by limitation, any court of equitable powers, held in the county where it has its principal office, on application of any creditor or stockholder of such corporation, may at any time, in an action, against the company, either continue such directors, trustees as aforesaid, or on proof that they or some of them are incapable or unfaithful, or have resigned, remove such as have given cause after such notice as may be reasonable, to the trustee or directors, or appoint them if none are removed or the remainder of the board to be receivers of and for such corporation, or, if all are removed or resign, may appoint one or more other persons receivers, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the company, with power to prosecute

[92] Nev. Stats. 1903, p. 154, § 92.

and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for the purposes aforesaid.[93]

§ 940. **Receiverships and dissolution by the court.** Whenever a corporation has in ten successive years failed to pay dividends amounting in all to 5 per cent of its entire outstanding capital, or has wilfully violated its charter, or its trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs, or its assets are in danger of waste through attachment, litigation or otherwise, or said corporation has abandoned its business and has not proceeded diligently to wind up its affairs, or to distribute its assets in a reasonable time, or has become insolvent and is not about to resume its business with safety to the public, any holder or holders of one tenth of the capital stock may apply to the district court, held in the district where the corporation has its principal place of business, for an order dissolving the corporation and appointing a receiver to wind up its affairs, and may by injunction restrain the corporation from exercising any of its powers or doing any business whatsoever, except by and through a receiver appointed by the court. Such court may, if good cause exist therefor, appoint one or more receivers for such purpose, but in all cases directors or trustees who have been guilty of no negligence nor active breach of duty shall have the right to be preferred in making such appointment, and such court may at any time for sufficient cause make a decree dissolving such corporation and terminating its existence.[94]

[93] Nev. Stats. 1903, pp. 154, 155, § 93.
[94] Nev. Stats. 1903, p. 155, § 94.

§ 941. **Proceedings when a receiver is appointed.** Whenever any decree is made appointing a receiver to wind up the affairs of a corporation, it shall be the duty of such receiver to file a certified copy of his appointment and of the decree of dissolution, if made by a court, with the secretary of state. Such court shall also direct that such decree appointing a receiver be published at least once a week for four weeks in some newspaper published in the county and shall also limit a time which shall not be less than four (4) months from the date of the first publication of the order or decree within which all claims against such corporation shall be presented to the receiver, and shall provide that all claims not so presented shall not share in the assets but be barred therefrom unless, before actual distribution is made and on good cause shown, permission be given to present any claim after the time so limited.[95]

§ 942. **Sale of property and franchise.** Said court may in its discretion, in lieu of decreeing the dissolution of such corporation, order the receiver to sell its property and franchise, and the purchaser thereof shall succeed to all the rights and privileges of said corporation and may reorganize the same under direction of said court or pursuant to sections 49 and 50 of this act. At any sale of such property at public auction the court may in its discretion authorize the receiver to accept in payment duly allowed claims against said corporation at a proper valution.[96]

§ 943. **Sale of deteriorating property.** Whenever the property of an insolvent corporation is at the time of the appointment of a receiver encumbered with liens of any character, and the validity, extent or legality of any such lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending litigation over or respecting such lien, the court appointing the receiver may order the receiver to sell the property of the corporation clear of encumbrances,

[95] Nev. Stats. 1903, pp. 155, 156, § 95.
[96] Nev. Stats. 1903, p. 156, § 96.

at public or private sale for the best price that can be obtained, subject to confirmation by the court, and pay the net proceeds of the sale into court, there to remain subject to order of court to be distributed and apportioned under the supervision of the court, as it shall direct.[97]

§ 944. **Compensation of receivers.** The district court shall, before making distribution of the assets of an insolvent corporation among the creditors or stockholders thereof, allow a reasonable compensation to the receivers or trustees for their services, and the costs and expenses incurred in and about the execution of their trusts and the costs of the proceedings in said court, to be first paid out of said assets.[98]

§ 945. **Corporations for mining purposes. Capital stock consisting of mining-ground.** In corporations already formed, or which may hereafter be formed under this act, or otherwise, for mining purposes, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be or has been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the value of so much of his or her interest in said mining claim, the legal title to which he or she may, by deed, deed of trust, or other instrument, vest, or have vested, in such corporation, for mining purposes; such subscription to be deemed to have been made and to have been fully paid on the execution and delivery to such corporation and its acceptance by such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied, or which may hereafter be levied, by the board of directors or trustees of such corporation, provided such corporation has the right and power to levy assess-

[97] Nev. Stats. 1903, p. 156, § 97.
[98] Nev. Stats. 1903, p. 156, § 98.

ments, be affected by reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section; provided, that the greater portion of said amount of capital stock shall have been subscribed; and, provided further, that this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes, as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or express contract; provided further, that no corporation hereafter formed shall ever have power to assess paid up stock unless in its original articles or certificate of incorporation such power is reserved, and no amendment of such original in this respect or to give such power shall ever be made.[99]

§ 946. **Mining corporations governed by district mining laws.** All corporations already formed, or which may hereafter be formed under this act for mining purposes, shall be governed by the mining laws of the district where the mine is located.[100]

§ 947. **Mining corporations may become stockholders, etc.** Corporations already formed, or hereafter incorporated under the provisions of this act, for mining, milling or ore reduction purposes, may subscribe to and become stockholders in any corporation, company, or association now formed, or which may hereafter be formed, for the purpose of constructing any tunnel, shaft or other work, which may be calculated to aid or facilitate the exploration, development, or working of any mine or mining-ground in this state; and any corporation so becoming a stockholder therein shall, in proportion to its interest, be subject to all the liabilities, and entitled to all the rights and privileges of an individual stockholder.[101]

[99] Nev. Stats. 1903, p. 157, § 99.
[100] Nev. Stats. 1903, p. 157, § 100.
[101] Nev. Stats. 1903, p. 158, § 101.

§ 948. Fees of secretary of state. On filing any certificate or articles or other paper relative to corporations, in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state: For certificate or articles of incorporation ten (10) cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than ten dollars; increase of capital stock, ten (10) cents for each thousand dollars of the total increase authorized, but in no case less than ten dollars; consolidation and merger of corporations, ten (10) cents for each thousand dollars of capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no case less than ten dollars; extension or renewal of corporate existence of any corporation, one-half that required for the original certificate or articles of organization or incorporation by this act; dissolution of corporation, change of nature of business, amended articles or certificates of incorporation or organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value of number of shares, ten dollars; for filing list of officers and directors or trustees, and name of agent in charge of principal office, one dollar; filing copy of charter and statement of foreign corporation and issuing certificate of authority to transact business, ten dollars; for certifying to articles of incorporation where copy is furnished, two dollars; for certifying to the authorized printed copy of the general corporation law, as compiled by the secretary of state, two dollars; and for all certificates not hereby provided for, five dollars; provided, that no fees shall be required to be paid by any religious or charitable society or association or educational association having no capital stock.[102]

§ 949. The secretary of state to compile and publish, biennially, a list of corporations. The secretary of state shall biennially compile from the records of his office, and publish

[102] Nev. Stats. 1903, § 102, as amended 1905, p. 76.

in his report, a complete list, in alphabetical order, of the original and amended certificates or articles of incorporation or of extension or renewal filed during the preceding year, together with the location of the principal office of each in this state, and the name of the agent in charge thereof the amount of the authorized capital stock, the amount with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue; and shall index each and every paper filed or recorded in his office under or pursuant to this act, so that each can be readily found, placing and keeping those relating to each corporation together, and register every paper so filed in a book kept for that purpose under the heading or title of the corporation or company filing the same or affected thereby, each corporation incorporated under this act to have a separate page which shall show at all times the title or description of each and every paper filed by or on behalf of said corporation with the date of such filing.[103]

§ 950. **Meaning of certain terms used in this act.** The term "principal office," "principal place of business," "principal office in this state," and "registered office," wherever used in this act shall be construed as referring to the office maintained in this state as required by sections 14, 15 and 16 of this act and as synonymous terms; "articles of incorporation" and "certificate of incorporation" shall also be construed as synonymous terms; the words "trustees" and "directors" also shall be construed as synonymous terms wherever used in this act. "Stockholders" or equivalent terms shall include creditors entitled to vote as stockholders unless otherwise provided in this act. The singular number shall include the plural, and the plural shall include the singular, and general terms and powers given herein, and by the use of general terms, shall not be restricted by the use of special terms, or be held to be restricted by any grant of special powers herein contained.[104]

[103] Nev. Stats. 1903, § 103, as amended 1905, pp. 76, 77.
[104] Nev. Stats. 1903, p. 159, § 104.

§ 951. **Seal.** The seal of a corporation shall contain its corporate name and date when incorporated, which date shall be that of the certificate issued by the secretary of state under and pursuant to section 5 of this act. A departure from this provision shall not invalidate any corporate act otherwise valid, and the impression of the corporate seal on paper without wax or adhesive substance shall be a valid seal.[105]

§ 952. **Retaliatory taxation.** When, by the laws of any other state, country, territory, colony, dependency or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this state, doing business in such other state or nation, or upon their agents therein, than the laws of this state impose upon their corporations or agents doing business in this state, so long as such laws continue in force in such other or foreign state or nation, territory, colony, dependency, or country the same taxes, fines, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all corporations of such other state or nation, country, territory, colony or dependency doing business within this state and upon their agents here; provided, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporation of other states or nations transacting business in the state.[106]

§ 953. **Renewal of charters.** Any corporation existing under the laws of this state may, at any time before the expiration of the time limited for its existence, procure a renewal of its charter for any period, together with all the rights, franchises, privileges and immunities, and subject to all its existing debts, duties and liabilities, secured or imposed by its then existing charter, by filing a certificate of its president and secretary, duly sworn or affirmed to by

[105] Nev. Stats. 1903, p. 159, § 105.
[106] Nev. Stats. 1903, pp. 159, 160, § 106.

such officers before any person authorized by the laws of this state to administer oaths or affirmations, with the secretary of state, which certificate must be authorized by two-thirds in interest of the stock in writing, or by a resolution to that effect, and shall set forth:

1. The name of the corporation, which shall be the existing name of said corporation at the time of such renewal.

2. The name of the city, town or place within the county in which its principal office or place of business is located in this state.

3. The date when such renewal is to commence, which date shall be prior to the date of the expiration of the charter desired to be renewed, whether or not such renewal is to be perpetual, and, if not perpetual, the time for which such renewal is to continue.

4. That the corporation desiring to renew, and so renewing its charter, is duly organized and carrying on the business authorized by its existing charter, and desires to renew or continue its existence under and pursuant to and subject to the provisions of this act.[107]

§ 954. **Filing certificates and recording copy.** Such certificate for the renewal and continuance of the existence of any such corporation shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office; said certified copy shall be filed and recorded in the office of the clerk of the county in which the principal office of said corporation is located in this state, in a book kept for that purpose, or in the book provided for recording original articles pursuant to section 3 of this act; and said certificate or a certified copy thereof duly certified under the hand of the secretary of state and his seal of office, accompanied with the certificate of the clerk of the county wherein the same is recorded, under his hand and seal of his office, stating that it has been recorded, the record of the same in the office of the clerk aforesaid, or a copy of said record duly certified by the

[107] Nev. Stats. 1903, p. 160, § 107.

aforesaid clerk, shall be evidence in all courts of law and equity of this state.[108]

§ 955. **Renewal.** Any corporation now existing or hereafter incorporated desiring to renew, extend or continue its corporate existence, shall upon complying with the provisions of sections 102-107 and 108 of this act, be, and continue for the time stated in its certificate of renewal, a corporation, and shall, in addition to the rights, privileges and immunities conferred by its original charter, possess and enjoy all the benefits of this act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities of this act imposed on such corporations.[109]

§ 956. **May hold stock, etc., of other corporations.** Any corporation organized under the laws of this state, whether created by this act, special act of legislature, or other general law, may guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this state, or any other state, country, nation or government, and while owner of said stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon.[110]

§ 957. **Meetings held by consent without notice.** The by-laws may also provide that whenever all parties entitled to vote at any meeting, whether of directors or trustees, stockholders or members, consent, either by a writing on the records of the meeting or filed with the secretary, or by presence at such meeting and oral consent entered on the minutes, or by taking part in the deliberations at such meeting without objection, the doings of such meeting shall be as valid as if had at a meeting regularly called and noticed,

[108] Nev. Stats. 1903, pp. 160, 161, § 108.
[109] Nev. Stats. 1903, p. 161, § 109.
[110] Nev. Stats. 1903, § 110, as amended 1905, p. 77.

and at such meeting any business may be transacted which is not excepted from the written consent or to the consideration of which no objection for want of notice is made at the time, and if any meeting be irregular for want of notice or of such consent, provided a quorum was present at such meeting, the proceedings of said meeting may be ratified and approved and rendered likewise void and the irregularity or defect therein waived by a writing signed by all parties having a right to vote at such meeting; and that such consent or approval of members, stockholders or creditors may be by proxy or attorney, but all such proxies and powers of attorney must be in writing.[111]

§ 958. **Waiver.** Whenever any notice whatever is required to be given under the provision of this act, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.[112]

§ 959. **Amendment of this act.** This act may be amended or repealed, at the pleasure of the legislature, but such amendment or repeal shall not take away or impair any remedy against any corporation under this act, or its officers, for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every such corporation except so far as the same are inapplicable and inappropriate to the objects of such corporation.[113]

§ 960. **Repealing and continuing certain acts in force. Vested rights not impaired.** All acts and parts of acts, general and special, inconsistent or in conflict with this act are hereby repealed; but no existing corporation shall be thereby dissolved, nor shall the powers specified in its charter or certificate or articles of incorporation be thereby impaired or limited in any way, and nothing herein contained

[111] Nev. Stats. 1903, pp. 161, 162, § 111.
[112] Nev. Stats. 1903, p. 162, § 112.
[113] Nev. Stats. 1903, p. 162, § 113.

shall impair or annul, divest or disturb any vested rights, privileges or powers actually exercised and enjoyed in or by any corporation under any law hereby repealed. And provided that all rights and privileges and immunities vested or accrued by or under prior laws, all suits pending, all rights of action conferred and all duties, restrictions, liabilities and penalties imposed or required by or under laws prior hereto, shall not be impaired, diminished or affected hereby. All existing legislation affecting the formation, government and regulation of banks and banking companies, insurance and insurance companies, including life, fire, or accident and mutual insurance companies, surety companies and companies organized or that may be organized for the purpose of transacting business as sureties on bonds and undertakings, railroad companies, or railroad, telephone and telegraph companies, remain unaffected by the provisions of this act and continue in full force and virtue. This act shall not affect the existence of any corporation heretofore formed, but such corporation may continue in existence under the laws heretofore in force, or may elect to renew or continue its existence under this act. No corporation formed or existing prior to the passage of this act is affected by any of the provisions thereof, except those provisions expressly made applicable to corporations heretofore formed, unless such corporation elects to renew or continue its existence under it, as provided herein, with the consent of two thirds of its members or of the owners of two thirds of all its stock. But the laws under which such corporations were formed or exist, are applicable to all such corporations but are repealed subject to the provisions of this section. This act shall take effect immediately.[114]

§ 961. **Foreign corporations. To file legal copies of charter with secretary of state.** Every corporation organized under the laws of another state, territory, the District of Columbia, a dependency of the United States or foreign

[114] Nev. Stats. 1903, pp. 162, 163, § 114.

country, which shall hereafter enter this state for the purpose of doing business therein, must, before commencing or doing any business in this state, file in the office of the secretary of state of the state of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental acts, or other instrument or authority by which it was created, and a certified copy thereof, duly certified by the secretary of state of this state in the office of the county clerk of the county where its principal place of business in this state is located.[115]

§ 962. **Same. Fees as if organized in Nevada.** On filing certified articles, papers, or other instrument of incorporation, as required in section one of this act, said corporation shall pay the same fees to the secretary of state as are paid by corporations organized under the laws of this state.[116]

§ 963. **Same. Penalty for neglect. Duties of state and county officers.** Every such corporation which shall fail or neglect to comply with the provisions of this act shall be subject to a fine of not less than five hundred dollars, to be recovered in a court of competent jurisdiction, and shall not be allowed to commence, maintain, or defend any action or proceeding in any court of this state until it shall have fully complied with the provisions of this act; and any person or persons who shall act as agent within this state of any such corporation, which shall fail for a period of ten days after the taking effect of this act to comply with the provisions herein, shall also be personally and individually liable to a fine of not less than five hundred dollars; and it is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of this act, to report them to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal place of business, or the attorney-general of the state, or both, as soon as practicable,

[115] Nev. Stats. 1907, p. 190, § 1.
[116] Id., § 2.

to institute proceedings to recover the fine or fines provided for in this section.[117]

§ 964. **Same. Repeal.** All acts and parts of acts in conflict herewith are hereby repealed.[118]

§ 965. **Same. Foreign corporations and associations to make and keep agents in this state, upon whom all legal process may be served. Agent to reside in the state.** Every incorporated company or association created and existing under the laws of any other state, or territory, or foreign government, or the government of the United States, owning property or doing business in this state, shall appoint and keep in this state an agent upon whom all legal process may be served for such corporation or association. Such corporation shall file a certificate, properly authenticated by the proper officers of such company, with the secretary of state, specifying the full name and residence of such agent, which certificate shall be renewed by such company as often as a change may be made in such appointment, or vacancy shall occur in such agency.[119]

§ 966. **Same. Serving of process.** Any and all legal process may be served upon such company, by delivering to such agent personally, a copy of such process, which shall be legal and valid.[120]

§ 967. **Same. Penalty for failure to appoint agent.** If any such company shall fail to appoint such agent, or fail to file such certificate for fifteen days after a vacancy occurs in such agency, on the production of a certificate of the secretary of state showing either fact, which certificate shall be conclusive evidence of the fact so certified to and be made a part of the return of service, it shall be lawful to serve such company with any and all legal process, by delivering

[117] Nev. Stats. 1907, p. 191, § 3.
[118] Id., § 4.
[119] Nev. Comp. Laws, p. 193, § 899.
[120] Id., § 900.

a copy to the secretary of state, or, in his absence, to any duly appointed and acting deputy secretary of state, and such service shall be valid to all intents and purposes; provided, that in all cases of service under this act, the defendant shall have forty days (exclusive of the day of service) within which to answer or plead, except in cases in the justice courts, where the summons shall specify the day and hour for the appearance of the defendant, and shall be made returnable not less than forty nor more than sixty days from the date of the issuance thereof, and shall be served at least forty days before the time fixed therein for the appearance of the defendant. This act shall be construed as giving an additional mode and manner of serving process and as not affecting the validity of any service of process hereafter made, which would be valid under any statute now in force.[121]

§ 968. **Same. To publish annual statements.** All foreign corporations doing business in the state of Nevada shall during the month of May of this year and in each succeeding year in the month of January, publish a statement of their last year's business in some daily newspaper in the state of Nevada for a period of one week.[122]

§ 969. **Same. Statement filed with each county assessor.** The secretary of the company publishing the statement shall file a copy with the assessor of each county of the state of Nevada, in which said company is doing business.[123]

§ 970. **Same. Penalty for neglect.** Any corporation coming within the provisions of this act who shall neglect or refuse to file a statement as required by section one of this act, shall be liable to a penalty of $100 for each month that the published statement remains unfiled with the several assessors of the state.[124]

[121] Nev. Stats. 1905, pp. 140, 141, § 3.
[122] Nev. Stats. 1901, p. 118, § 1.
[123] Nev. Stats. 1907, p. 39, § 2.
[124] Nev. Stats. 1901, p. 118, § 3.

§ 971. Same. Any district attorney can commence suit. Any district attorney in the state is competent to sue to recover the penalty, or the attorney-general. The first county suing through its district attorney shall secure the penalty, and if no suit is brought for the penalty by any district attorney the state shall have the right to recover through its attorney-general.[125]

§ 972. Same. Repealing clause. All acts and parts of acts in conflict with this act is hereby repealed.[126]

§ 973. Right of eminent domain granted to foreign corporations. The right of eminent domain is hereby granted to non-resident or foreign corporations, which are now organized or may be organized under the laws of any other state or territory, or under any act of Congress, and upon the same terms and conditions as any resident citizen or domestic corporation; provided, however, that before any corporation organized or incorporated otherwise than under the laws of this state shall be entitled to any of the rights granted by this act, it must first comply with all laws of this state prescribing the conditions in which such foreign corporation may be authorized to do business within the state or within any county of the state wherein it seeks to exercise the right of eminent domain.[127]

[125] Nev. Stats. 1901, pp. 118, 119, § 4.
[126] Id., p. 119, § 5.
[127] Nev. Stats. 1907, p. 289, § 34.

CHAPTER XVIII.

STATE AND TERRITORIAL STATUTES. NEW MEXICO.

§ 974. Notice of location.
§ 975. Discovery-shaft.
§ 976. Equivalent of discovery-shaft.
§ 977. Recording notice of location.
§ 978. Marking surface boundaries.

§ 974. Notice of location. Must be posted in a conspicuous place, giving the name of the locator, his intention to locate the claim and a description thereof by reference to a permanent monument.[1]

§ 975. Discovery-shaft. A discovery-shaft at least ten feet deep from the lowest part of the rim of such shaft at the surface, or a tunnel, adit or open cut upon such claim, at least ten feet deep below the surface, exposing mineral in place must be sunk or driven within ninety days from date of taking possession.[2]

§ 976. Equivalent of discovery-shaft. Same as Colorado.[3]

§ 977. Recording notice of location. A copy of notice of location must be recorded in the office of the county recorder within three months after posting.

§ 978. Marking surface boundaries. Boundaries must be marked by four substantial posts or monuments set at each corner of the claim so as to distinctly mark the claim on the ground so that its boundaries may be readily traced.[4]

[1] N. M. Comp. Laws 1897, § 2286.
[2] N. M. Comp. Laws 1897, § 2298.
[3] See ante, p. 576.
[4] N. M. Laws 1899, ch. 57, § 1, p. 111, amending N. M. Comp. Laws 1897, § 2299.

CHAPTER XIX.

STATE AND TERRITORIAL STATUTES. NORTH DAKOTA.

§ 979. Length of lode claim.
§ 980. Width of lode claim.
§ 981. Discoverer to record claim. When recorded.
§ 982. Certificate may be void when.
§ 983. Manner of locating claim. Discovery-shaft.
§ 984. Manner of marking surface boundaries.
§ 985. Equivalent of discovery-shaft.
§ 986. Time in which location-work must be done.
§ 987. Certificate construed to contain what.
§ 988. Claim not extended beyond exterior lines.
§ 989. Owner of land may demand security from miner.
§ 990. Amended certificate may be filed.
§ 991. Amount of annual labor.
§ 992. Relocating abandoned claims.
§ 993. Certificate to contain but one location.

§ 979. Length of lode claim. The same as South Dakota.[1]

§ 980. Width of lode claim. Same as South Dakota, except that the location is only allowed one hundred and fifty feet in width each side of the center of the vein or crevice, provided, the citizens of any county may elect to increase the width to not exceeding three hundred feet each side of the center of the vein or crevice.[2]

§ 981. Discoverer to record claim. When recorded. Same as South Dakota, except that paragraph seven in the South Dakota statute is omitted.[3]

§ 982. Certificate may be void when. Same as South Dakota.[4]

[1] N. D. Pol. Code, § 1800.
[2] N. D. Pol. Code, § 1801.
[3] N. D. Pol. Code, § 1802.
[4] N. D. Pol. Code, § 1803.

§ 983. **Manner of locating claim. Discovery-shaft.** Same as South Dakota.[5]

§ 984. **Manner of marking surface boundaries.** Same as South Dakota.[6]

§ 985. **Equivalent of discovery-shaft.** Same as South Dakota.[7]

§ 986. **Time in which location-work must be done.** Same as South Dakota.[8]

§ 987. **Certificate construed to contain what.** Same as South Dakota.[9]

§ 988. **Claim not extended beyond exterior lines.** Same as South Dakota.[10]

§ 989. **Owner of land may demand security from miner.** Same as South Dakota.[11]

§ 990. **Amended certificate may be filed.** Same as South Dakota.[12]

§ 991. **Amount of annual labor.** Same as South Dakota.[13]

§ 992. **Relocating abandoned claims.** Same as South Dakota, except that previous sections referred to as necessary to be complied with are sections one thousand eight hundred and four and one thousand eight hundred and eight.[14]

§ 993. **Certificate to contain but one location.** Same as South Dakota.[15]

[5] N. D. Pol. Code, § 1804.
[6] N. D. Pol. Code, § 1805.
[7] N. D. Pol. Code, § 1806.
[8] N. D. Pol. Code, § 1807.
[9] N. D. Pol. Code, § 1808.
[10] N. D. Pol. Code, § 1809.
[11] N. D. Pol. Code, § 1810.
[12] N. D. Pol. Code, § 1811.
[13] N. D. Pol. Code, § 1812.
[14] N. D. Pol. Code, § 1813.
[15] N. D. Pol. Code, § 1814.

These sections of North Dakota Political Code are from South Dakota code, and will be found verbatim, post, pp. 688 et seq.

CHAPTER XX.

STATE AND TERRITORIAL STATUTES. OREGON.

§ 994. Recording notice of location.
§ 995. Equivalent of discovery-shaft.
§ 996. Notice of location. Posting.
§ 997. Discovery-shaft. Part of assessment-work.
§ 998. Same. Law governing.
§ 999. Affidavit of location-work.
§ 1000. Mining claims are real estate.
§ 1001. Mining claims exempt from taxation.
§ 1002. Grub-stake contracts shall be in writing.
§ 1003. Marking boundaries.
§ 1004. Abandoned claims deemed unappropriated mineral lands.

§ 994. Recording notice of location. The locator shall, within sixty days after posting, file for record with the recorder of conveyances, if there be one, otherwise with the county clerk, a copy of the notice posted by him, having attached an affidavit showing that the required location work has been done. No location-notice shall be entitled to record, or recorded, until the location-work has been done and the necessary affidavit attached to the notice.[1]

§ 995. Equivalent of discovery-shaft. Same as Colorado,[2] except that the open cut must be at least six feet deep, four feet wide and ten feet long along the lode from the point where the same may be in any manner discovered.[3]

§ 996. Notice of location. Posting. Must be posted, same as in Colorado;[4] also stating the number of linear feet claimed along the vein each way from the discovery, the general course or strike of the vein, and reference to some

[1] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3976.
[2] See ante, p. 576.
[3] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3977.
[4] See ante, p. 576.

natural object or permanent monument in the vicinity, and by defining the boundaries upon the surface.[5]

§ 997. **Discovery-shaft. Part of assessment-work.** Shall not be deemed a part of the annual assessment-work required by the Federal statute.[6]

§ 998. **Same. Law governing.** Same as Colorado,[7] except that it must show a lode or vein of mineral deposit in place.[8]

§ 999. **Affidavit of location-work.** Must be made by the locator or some one for him who did the work or has knowledge of the facts.[9]

§ 1000. **Mining claims are real estate**, whether quartz or placer, and the owner of the possessory right thereto shall have a legal estate therein within the meaning of section three hundred and twenty-six.[10]

§ 1001. **Mining claims exempt from taxation**, prior to patent, except as to the improvements, machinery, and buildings.[11]

§ 1002. **Grub-stake contracts shall be in writing**, and filed for record with the recorder of conveyances of the county wherein the locations are made. They must contain the names of the parties and the duration thereof; otherwise the contracts are void.[12]

§ 1003. **Marking boundaries.** Within thirty days after posting, boundaries shall be marked by six substantial posts,

[5] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3975.
[6] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3977.
[7] See ante, p. 576.
[8] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3977.
[9] Id.
[10] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3979.
[11] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3980.
[12] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3985.

projecting not less than three feet above the ground, and not less than four inches square or in diameter, or by substantial mounds of stone, or earth and stone, at least two feet in height, to wit, one post or mound at each corner and at the center end lines of the claim.[13]

§ 1004. Abandoned claims deemed unappropriated mineral lands. Abandoned claims shall be deemed unappropriated mineral lands, and titles thereto shall be obtained as specified by law, without reference to any work previously done thereon.[14]

[13] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3975.
[14] 2 Bel. & C. Ann. Codes and Stats. Oreg., § 3978.

CHAPTER XXI.

STATE AND TERRITORIAL STATUTES. SOUTH DAKOTA.

§ 1005. Location and size of claims. Length of lode claim fifteen hundred feet.
§ 1006. Width of lode.
§ 1007. Discoverer to record claim when, and when recorded.
§ 1008. Certificate will be void when.
§ 1009. Manner of locating claim.
§ 1010. Marking surface boundaries.
§ 1011. Requisite of a location.
§ 1012. Time in which labor must be performed.
§ 1013. Certificate construed to contain what.
§ 1014. Claim not extended beyond exterior lines.
§ 1015. Owner of land may demand security of miner.
§ 1016. Amended certificate may be filed.
§ 1017. Amount of work that must be done annually.
§ 1018. Relocating abandoned claims.
§ 1019. Certificate can contain but one location.
§ 1020. Fee for recording.

§ 1005. **Location and size of claims. Length of lode claim fifteen hundred feet.** The length of any lode claim hereafter located within this state may equal but shall not exceed fifteen hundred feet along the vein or lode.[1]

§ 1006. **Width of lode.** The width of lode claim shall be three hundred feet on each side of the center of the vein or crevice, provided that any county may at any general election determine upon a less width than above specified, provided that not less than twenty-five feet on each side of the vein or lode shall be prohibited.[2]

§ 1007. **Discoverer to record claim when, and when recorded.** The discoverer of a lode shall within sixty days from the date of discovery record his claim in the office

[1] S. D. Pol. Code, § 2532.

[2] S. D. Pol. Code, § 2533.

of the register of deeds of the county in which such lode is situated, by a location-certificate, which shall contain:

1. The name of the lode.
2. The name of the locator, or locators.
3. The date of location.
4. The number of feet in length claimed on each side of the discovery-shaft.
5. The number of feet in width claimed on each side of the vein or lode.
6. The general course of the lode as near as may be.
7. That when the location-certificate is filed for record in the office of the register of deeds, the register of deeds shall immediately furnish to the locator or locators a certificate giving the name of the location, the name of the locator or locators; the date of filing in the office of the register of deeds; and the book and page where recorded, for which certificate the register of deeds shall receive the sum of ten cents in addition to the amount now allowed by law for filing and recording location-certificates, which certificate shall be delivered to the locator or locators, who shall post the same, or a copy thereof, on the said claim on the same post or tree where the original notice is posted and in a conspicuous place. And if said certificate from said register of deeds or a copy thereof is not so posted within ninety days from the date of the original notice the said claim shall be deemed abandoned ground and be subject to relocation by any qualified locator. The said register of deeds shall, at the time of issuing said certificate, make a notation on the margin of the recorded certificate giving the date of the delivery of said certificate, which notation shall be prima facie evidence of the delivery and posting of the same as herein provided.[3]

§ 1008. Certificate will be void when. Any location-certificate of a lode claim which shall not contain the name of

[3] S. D. Pol. Code, § 2534.

the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery-shaft, the number of feet in width claimed, the general course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void.[4]

§ 1009. **Manner of locating claim.** Before filing such location-certificate the discoverer shall locate his claim by first sinking a discovery-shaft thereon sufficient to show a well-defined mineral vein or lode, and not less than ten feet in depth on the lower side. Second: By posting at the point of discovery, on the surface, a plain sign or notice containing the name of the lode, the name of the locator or locators and the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side of the lode. Third: By marking the surface boundaries of the claim.[5]

§ 1010. **Marking surface boundaries.** Such surface boundaries shall be marked by eight substantial posts, hewed or blazed on the side or sides facing the claim and plainly marked with the name of the lode and the corner, end or side of the claim that they respectively represent, and sunk in the ground, to wit: one at each corner and one at the center of each side line, and one at each end of the lode. When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.[6]

§ 1011. **Requisite of a location.** Any open cut, at least ten foot face, crosscut or tunnel at a depth sufficient to disclose the mineral vein or lode, or an adit of at least ten feet in along the lode from the point where the lode may be in any manner discovered shall be equivalent to a discovery-shaft.[7]

[4] S. D. Pol. Code, § 2535.
[5] S. D. Pol. Code, § 2536.
[6] S. D. Pol. Code, § 2537.
[7] S. D. Pol. Code, § 2538.

§ 1012. **Time in which labor must be performed.** The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery-shaft thereon.[8]

§ 1013. **Certificate construed to contain what.** The location or location-certificate of any lode claim shall be so construed to include all surface-ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended vertically with such parts of the lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.[9]

§ 1014. **Claim not extended beyond exterior lines.** If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.[10]

§ 1015. **Owner of land may demand security of miner.** When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.[11]

§ 1016. **Amended certificate may be filed.** If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of

[8] S. D. Pol. Code, § 2539.
[9] S. D. Pol. Code, § 2540.
[10] S. D. Pol. Code, § 2541.
[11] S. D. Pol. Code, § 2542.

the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this article, such locator or his assigns may file an additional certificate subject to the provisions of this article; provided, that such relocation does not interfere with the existing rights of others at the time of such relocation; and no such relocation or the record thereof shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous locations.[12]

§ 1017. Amount of work that must be done annually. The amount of work to be done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit: one hundred dollars annually; provided, that the period within which the work required to be done annually on all unpatented claims so located shall commence on the first day of January succeeding the date of location of such claim.[13]

§ 1018. Relocating abandoned claims. The relocation of abandoned lode claims shall be by sinking a new discovery-shaft and fixing new boundaries in the same manner as if it were the location of a new claim, or the relocator may sink the original shaft, cut or adit to a sufficient depth to comply with sections 2536 and 2538, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location-stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location-certificate must state that the whole or any part of the new location is located as abandoned property.[14]

[12] S. D. Pol. Code, § 2543.
[13] S. D. Pol. Code, § 2544.
[14] S. D. Pol. Code, § 2545.

§ 1019. **Certificate can contain but one location.** No location-certificate shall claim more than one location, whether the location be made by one or several locators; and if it purport to claim more than one location it shall be absolutely void, except as to the first location therein described; and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all.[15]

§ 1020. **Fee for recording.** The register of deeds shall be entitled to receive the sum of one dollar for each location-certificate recorded and certified by him, and shall furnish the locator or locators with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents.[16]

[15] S. D. Pol. Code, § 2546.

[16] S. D. Pol. Code, § 2547.

CHAPTER XXII.

STATE AND TERRITORIAL STATUTES. UTAH.

§ 1021. Notice of location.
§ 1022. Discovery-shaft.
§ 1023. Mining districts.
§ 1024. Marking boundaries.
§ 1025. Recording notice of location.
§ 1026. Filing affidavit of work done.

§ 1021. Notice of location. Same as Oregon.[1] If a placer or mill-site claim, the number of acres or superficial feet claimed, and such a description of the claim or mill site located by reference to some natural object or permanent monument as will identify the claim or mill site.[2]

§ 1022. Discovery-shaft. Regulated entirely by district rules and regulations.

§ 1023. Mining districts. A statute of 1899 permits the organization of mining districts, but expressly provides that the nearest boundary line of the district must not be within ten miles of the office of any county recorder.

§ 1024. Marking boundaries. The statute is substantially the same as the Federal statute.[3]

§ 1025. Recording notice of location. If the claim is situated without and beyond the original mining district, a substantial copy of the notice of location must be filed in the office of the county recorder within thirty days from the date of posting. And under the statute of 1899 the location-certificate when filed with the district mining recorder must be filed in duplicate, and the duplicate sent by the district mining recorder to the county recorder.

[1] See ante, p. 685.
[2] Utah Laws 1899, p. 26.
[3] Utah Laws 1899, p. 26.

§ 1026. Filing affidavit of work done. The owner of any quartz lode or placer mining claim who shall do or perform or cause to be done or performed the annual labor and improvements required by the laws of the United States, in order to prevent a forfeiture, must, within thirty days after the completion of such work or improvements, file in the office of the county recorder in which the greater part of the mining district, in which the claim is located, is situated, his affidavit or an affidavit or affidavits of the person or persons who performed or directed such labor or made or directed such improvements, and shall file a duplicate thereof with the district mining recorder of the district in which said claim is situated, showing:

1. The name of the claim and where situated.
2. The number of days' work done and the character and value of the improvements placed thereon.
3. The date or dates of performing said labor and making said improvements and number of cubic feet of earth or rock removed.
4. At whose instance or request said work was done or improvements made.
5. The actual amount paid for said labor and improvements, and by whom paid, when the same was not done by the owner or owners of said claim.

Such affidavits or duly certified copies thereof shall be prima facie evidence of the facts therein stated.[4]

[4] Utah Laws 1899, ch. 14, § 6, p. 27.

CHAPTER XXIII.

STATE AND TERRITORIAL STATUTES. WASHINGTON.

§ 1027. Mining claims and rules of mining districts. Notice of location.
§ 1028. Discovery-shaft. Boundaries.
§ 1029. Cut or tunnel in lieu of shaft.
§ 1030. Definition of term "lode."
§ 1031. Amended certificate of location.
§ 1032. Proof of assessment-work.
§ 1033. Effect of record of proof.
§ 1034. Relocation. How made.
§ 1035. Limitation of rule as to shafts.
§ 1036. Location of placer claims. How made.
§ 1037. Effect of record. Evidence.
§ 1038. Mining districts. Rules and regulations.
§ 1039. Road-building as assessment-work.

§ 1027. Mining claims and rules of mining districts. Notice of location. The discoverer of a lode shall within ninety days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing the name or names of the locators, the date of the location, the number of feet in length claimed on each side of the discovery, the general course of the lode and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim.[1]

§ 1028. Discovery-shaft. Boundaries. Before filing such notice for record, the discoverer shall locate his claim by first sinking a discovery-shaft upon the lode, to the depth of 10 feet from the lowest part of the rim of such shaft at the surface, and shall post at the discovery at the time of the discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and shall mark the surface boundaries of the claim by placing

[1] 3 Bal. Ann. Codes and Stats. Wash., § 3151a.

substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines.[2]

§ 1029. **Cut or tunnel in lieu of shaft.** Any open cut or tunnel having a length of ten feet, which shall cut a lode at the depth of ten feet below the surface, shall hold such lode the same as if a discovery-shaft were sunk thereon, and shall be equivalent thereto.[3]

§ 1030. **Definition of term "lode."** The term "lode" as used in this act shall be construed to mean ledge, vein or deposit.[4]

§ 1031. **Amended certificate of location.** If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his assigns, shall learn that his original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this act, such locator or his assigns may file an amended certificate of location, subject to the provisions of this act, regarding the making of new locations.[5]

§ 1032. **Proof of assessment-work.** Within thirty days after the expiration of the period of time fixed for the per-

[2] 3 Bal. Ann. Codes and Stats. Wash., § 3151a.
[3] Id.
[4] Id.
[5] Id.

formance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvement was made or some person for him knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate an affidavit or oath of labor performed on such claim. Such affidavit shall state the exact amount and kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law or by rules of mining districts made thereon.[6]

§ 1033. **Effect of record of proof.** Such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements, and such original affidavit after it has been recorded, or a certified copy of record of same, shall be received as evidence accordingly by all the courts of this state.[7]

§ 1034. **Relocation. How made.** The relocation of forfeited or abandoned quartz or lode claims shall only be made by sinking a new discovery-shaft and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the relocator may sink the original discovery-shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required; in either case a new location-monument shall be erected and the location-certificate shall state if the whole or any part of the new location is located as abandoned property.[8]

§ 1035. **Limitation of rule as to shafts.** The provision herein, relating to discovery-shafts, shall not apply to any mining location west of the summit of the Cascade Mountains.[9]

[6] 3 Bal. Ann. Codes and Stats. Wash., § 3151a.
[7] Id.
[8] Id.
[9] Id.

§ 1036. **Location of placer claims. How made.** The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his claim in the following manner:

1. He must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (a) the name of the claim; (b) the name of the locator or locators; (c) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of location; (d) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

2. Within thirty days from the date of such discovery he must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his location on the ground that its boundaries may be readily traced.

3. Within sixty days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall not[10] be equivalent in the aggregate to at least $10 worth of such labor for each 20 acres, or fractional part thereof, contained in such location or claim: provided, however, that nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

4. Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done.[11]

[10] The insertion of the word "not" in this statute is evidently a clerical error.

[11] 3 Bal. Ann. Codes and Stats. Wash., § 3151a.

§ 1037. **Effect of record. Evidence.** The affidavit provided for in the last section, and the aforesaid placer notice or certificate of location when filed for record, shall be prima facie evidence of the facts therein recited. A copy of such certificate, notice or affidavit certified by the county auditor shall be admitted in evidence in all actions or proceeding with the same effect as the original and the provisions of sections six and seven of this act shall apply to placer claims as well as lode claims.

All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of this act in so far as the same are respectively applicable thereto.[12]

§ 1038. **Mining districts. Rules and regulations.** Any mining district organized in the state of Washington in accordance with the laws of the United States, shall have power to make rules and regulations for such mining district, providing such rules and regulations do not conflict with the laws of the state of Washington or of the United States.[13]

§ 1039. **Road-building as assessment-work.** Any mining district shall have the power to make road-building to mining claims within such district applicable as assessment-work, or improvement upon such claims: provided, that rules pertaining to such road-building shall be made only at a public meeting of the miners of such district regularly called by the mining recorder of such district: provided further, that such meeting shall be attended by at least twelve property holders of such district, and that no such rule can be made without the assent of the majority of the property holders of such district, who are present at such meeting. Such meeting to designate where, when and how such road-work shall be done, and shall designate some one of their number who shall superintend such road-building or construction, and who shall receipt for such labor to the performer

[12] 3 Bal. Ann. Codes and Stats. Wash., § 3151a.
[13] Id.

thereof, such receipts to be filed with the county auditor of the county in which such work is performed by the holder or holders of such receipts, and shall be received as prima facie evidence of labor performed as annual assessment-work upon such claim or claims, as may be designated by an affidavit or oath of labor as provided for in section six of this act: provided, that nothing in this act can be construed as being mandatory upon any owner or holder of mining property to perform labor upon any such road.[14]

[14] 8 Bal. Ann. Codes and Stats. Wash., § 3151a.

CHAPTER XXIV.

STATE AND TERRITORIAL STATUTES. WYOMING.

§ 1040. Notice of location. Lode claim.
§ 1041. Marking boundaries.
§ 1042. Discovery-shaft.
§ 1043. Recording location-certificate.
§ 1044. Location-certificate void when.
§ 1045. Equivalent of discovery-shaft.
§ 1046. Relocation of abandoned claims.
§ 1047. Location-certificate of placer claim.
§ 1048. Notice of location.
§ 1049. Assessment-work on placer claim.
§ 1050. Amount of assessment-work on placer claim.
§ 1051. Assessment-work upon contiguous claims.
§ 1052. Assessment-work may be regulated by mining district.
§ 1053. Effect of failure to do assessment-work.
§ 1054. Affidavit of assessment-work done.

§ 1040. Notice of location. Lode claim. Same as Colorado,[1] and add the name of the discoverer.[2]

§ 1041. Marking boundaries. Boundaries of claim must be marked by six substantial monuments of stone or posts, as in Colorado.[3]

§ 1042. Discovery-shaft. Discovery-shaft ten feet deep must be sunk within sixty days from date of discovery.[4]

§ 1043. Recording location-certificate. The locator must, within sixty days from the date of discovery, file for record with the county clerk, a location-certificate, as in Colorado, with an additional statement as to the width on each side of the discovery-shaft and describing the claim if it is on sur-

[1] See ante, p. 752.
[2] Wyo. Rev. Stats. 1899, § 2548.
[3] Id.
[4] Wyo. Rev. Stats. 1899, §§ 2548, 2550.

veyed land by such reference to sections or quarter-sections as will identify the claims beyond question.[5]

§ 1044. **Location-certificate void when.** Any certificate of location of a lode claim which shall not fully contain all the requirements named in section 2546, together with such other description as shall identify the lode or claim with reasonable certainty, shall be void.[6]

§ 1045. **Equivalent of discovery-shaft.** Any open cut which shall cut the vein ten feet in length, and with face ten feet in height, or any crosscut tunnel, or tunnel on the vein ten feet in length which shall cut the vein ten feet below the surface, measured from the bottom of such tunnel, shall hold such lode the same as if a discovery-shaft were sunk thereon.[7]

§ 1046. **Relocation of abandoned claims.** Any abandoned lode, vein or strata claim may be relocated and such relocation shall be perfected by sinking a new discovery-shaft and by fixing new boundaries in the same manner as provided for the location of a new claim; or the relocator may sink the original discovery-shaft ten feet deeper than it was at the time of its abandonment, and erect new, or adopt the old boundaries, renewing the posts or monuments of stone if removed or destroyed. In either event, a new location-stake shall be fixed. The location-certificate of an abandoned claim may state that the whole or any part of the new location is located as an abandoned claim.[8]

§ 1047. **Location-certificate of placer claim.** Hereafter the discoverer of any placer claim shall, within thirty days of the date of discovery, record such claim with the recorder of the mining district in which it is situate, if such district be organized, and shall, within ninety days from the date of discovery, cause to be recorded such claim in the office of the county clerk and ex officio register of deeds of the

[5] Wyo. Rev. Stats. 1899, § 2546.
[6] Wyo. Rev. Stats. 1899, § 2547.
[7] Wyo. Rev. Stats. 1899, § 2549.
[8] Wyo. Rev. Stats. 1899, § 2552.

county within which such claim may exist, by a location-certificate, which shall contain in either or both cases the following facts:

1. The name of the claim, designating it as a placer claim.
2. The name or names of the locator or locators thereof.
3. The date of location.
4. The number of feet or acres thus claimed.
5. A description of the claim by such designation of natural or fixed objects as shall identify the claim beyond question.[9]

§ 1048. Notice of location. Before filing such location-certificate, the discoverer of a placer claim shall locate his claim: first, by securely fixing upon his claim a notice, in plain painted, printed or written letters, containing the name of the claim, the name of the locator or locators, the date of the discovery, and the number of feet or acres claimed; second, by designating the surface boundaries by substantial posts or stone monument at each corner of the claim.[10]

§ 1049. Assessment-work on placer claim. The assessment-work on a placer claim as hereinafter provided shall be done during each and every calendar year after the first day of January following the date of location. Such assessment-work shall consist in (of) manual labor, permanent improvements made on the claim in buildings, roads or ditches made for the benefit of working such claims, or after any manner, so long as the work done accrues to the improvement of the claim, or shows good faith and intention on the part of the owner or owners and their intention to hold possession of said claim.[11]

§ 1050. Amount of assessment-work on placer claim. On placer claims of an area of one hundred and sixty acres, heretofore or hereafter located in this state, and not situate in an organized district, not less than one hundred dollars' worth of assessment-work must be performed during each

[9] Wyo. Rev. Stats. 1899, § 2553.
[10] Id.
[11] Wyo. Rev. Stats. 1899, § 2554.

calendar year from the first day of January after the date of location. On every placer mining claim so located, of less than 160 acres, the amount of the annual assessment-work shall be at the rate of 62½ cents per acre for each and every acre and fraction thereof; provided, that the total amount to be annually expended must in no case be less than $15.[12]

§ 1051. Assessment-work upon contiguous claims. When two or more placer mining claims lie contiguous and are owned by the same person, persons, company or corporation, the annual expenditure of labor and improvements required on each of such claims may be made upon any one of such contiguous claims if the owner or owners shall thus prefer.[13]

§ 1052. Assessment-work may be regulated by mining district. Where such placer claims are situated in an organized mining district, or if they are finally embraced in such a district, then the amount of assessment-work and the manner of its accomplishment shall be regulated entirely by the district laws, whether the amount of work required annually be greater or less than the amount hereinbefore set forth as required of placer claims not located in such districts.[14]

[12] Wyo. Rev. Stats. 1899, § 2555.

The Federal statute requires that one hundred dollars' worth of work in improvement must be performed on each claim, whether lode or placer, annually, after the year in which the claim is located, and the number of acres contained in the claim does not make any difference, so far as the requirement of this Federal statute is concerned; hence the provisions of the latter portion of the foregoing section of the Wyoming statutes are clearly in conflict with the act of Congress.

[13] Wyo. Rev. Stats. 1899, § 2556.

The Federal statutes permit annual work to be performed upon one claim for the adjoining claim or claims, provided such work or improvement is really a benefit to the adjoining claim or claims; hence no state statute can legally provide that work or improvement may be performed upon one claim for the adjoining claim, regardless of whether it is an improvement or benefit to the adjoining claim or claims.

[14] Wyo. Rev. Stats. 1899, § 2557.

Miners have no right or authority to make any rules or regulations providing that less than one hundred dollars' worth of work shall be annually performed upon any placer or lode mining claim. Any such miners' rule or state statute is in conflict with the Federal law.

§ 1053. **Effect of failure to do assessment-work.** Upon failure of the owners to do or have done the assessment-work required within the time above stated, such claim or claims upon which such work has not been completed, shall thereafter be open to relocation on or after the first day of January of any year after such labor or improvements should have been done, in the same manner and on the same terms as if no location thereof had ever been made; provided, that the original locators, their heirs, assigns or legal representatives have not resumed work upon such claim or claims after failure, and before any subsequent location has been made.[15]

§ 1054. **Affidavit of assessment-work done.** Upon completion of the required assessment-work for any mining claim, the owner or owners, or agent of such owner or owners, shall cause to be made by some person engaged in performing the work, an affidavit setting forth that the required amount of work was performed, which affidavit shall within thirty days after the completion of the work be recorded in the office of the recorder of the district in which the claim is situated, if such be organized, or if such district be not organized such affidavit shall within sixty days of completion of the work, be filed for record in the office of the county clerk and ex officio register of deeds of the county in which said claim is located.[16]

[15] Wyo. Rev. Stats. 1899, § 2558.
[16] Wyo. Rev. Stats. 1899, § 2559.

PART III.

FORMS.

FEDERAL, STATE, AND TERRITORIAL.

INTRODUCTORY.

The following pages embrace the forms, set out in the order in which they are used, in proceedings to obtain patent to a lode claim or group of claims. The applicant in the cases given is supposed to be an incorporated mining company.

Where a natural person applies for patent, there should be, of course, some modification of the forms herein used, and instead of a certified copy of the charter or articles of incorporation of the company, it is necessary to file in the land-office an affidavit of citizenship.

Where application is made for patent for a placer mining claim which has been located according to the governmental subdivisions upon lands already surveyed, no survey is necessary; hence it is unnecessary to have any proceedings in the office of the surveyor-general. If the applicant wishes to patent a placer claim located on unsurveyed lands, or a placer claim on surveyed land, that does not conform to the legal governmental subdivisions, — and there are cases where it is not practicable to conform to the legal subdivisions, — it is necessary to have a survey made. In either case an affidavit of two witnesses must be filed, showing that there are no known lodes within the boundary lines of the placer, unless the application specifically excludes the known lodes or makes application for a known lode within the placer. If the claim is on unsurveyed ground, the applica-

tion must be accompanied by a descriptive report containing in substance what is set out in rule 60, 31 Land Dec. 484, ante, Part II, Chapter V. The forms set forth herein for application for patent for lode claim are sufficient, with slight modifications, and can be used in proceedings to obtain patent to a placer mining claim.

FORMS IN PROCEEDINGS TO OBTAIN PATENT.

UNITED STATES.

Form 1. Application to United States surveyor-general for survey of mining claims.
Form 2. Resolution adopted by corporation authorizing individual to represent company in the patent proceedings.
Form 3. Notice of application for patent.
Form 4. Proof of posting notice and plat upon the claim.
Form 5. Application for patent.
Form 6. Order of publication of notice.
Form 7. Publisher's agreement.
Form 8. Proof of publication of notice.
Form 9. Proof that plat and notice remained posted on the claim during the time of publication.
Form 10. Statement of fees and charges.
Form 11. Application to purchase.
Form 12. United States patent. Lode claim.

Form 1.

APPLICATION TO UNITED STATES SURVEYOR-GENERAL FOR SURVEY OF MINING CLAIMS.

Los Angeles, Cal., ——, A. D. 19—.

United States Surveyor-General, San Francisco, Cal.

Sir,—Q. E. Mining and Reduction Company, claimant, hereby makes application for an official survey, under the provisions of chapter six, title thirty-two, of the Revised Statutes of the United States, and regulations and instructions thereunder, of the mining claim known as the "Q. E. Consolidated Quartz Mine," embracing the "Monarch" and "Q. E." lode claims, situate in —— mining district, Kern County, California, in section ——, township —— north, range —— west, San Bernardino meridian. Said claims are based upon valid locations made on various dates and duly recorded on various dates, and are fully described in the duly certified copies of the record of the location-certificates filed herewith. Said certificates contain the names of

the locators, the date of location, and such definite description of the claim by reference to natural objects or permanent monuments as will identify the claim, said locations have been distinctly marked by monuments on the ground, so that their boundaries can be readily traced.

I request that you send me an estimate of the amount required to defray the expenses of platting and other work in your office, required under the regulations, that I may make proper deposit therefor, and that thereupon you will cause the survey to be made by Thomas Brown, United States deputy mineral surveyor, and also cause proper action to be taken thereon by your office, as required by the United States mining laws and regulations thereunder.

GRANT JACKSON,
Attorney for Claimant.

Post-office address of claimant: 336 South Spring Street, city of Los Angeles, county of Los Angeles, California.

Post-office address of attorney for claimant: 918 Security Building, in said city of Los Angeles, California.

Form 2.

RESOLUTION ADOPTED BY CORPORATION AUTHORIZING INDIVIDUAL TO REPRESENT COMPANY IN THE PATENT PROCEEDINGS.

At a meeting of the board of directors of the Q. E. Mining and Reduction Company, held at the office of said corporation, ——, in the city of Los Angeles, California, Director Scott offered the following resolution:

Whereas, This corporation, the Q. E. Mining and Reduction Company, is the owner of the Q. E. Consolidated Quartz-Mine, embracing the "Monarch" and "Q. E." lode mining claims, designated by the United States surveyor-general for the state of California as United States survey No. 4141;

And whereas, This company is about to apply for a United States patent to said group of mines;

Therefore be it resolved, That Mr. James Moor, who is a citizen and resident of the city and county of Los Angeles, California, be, and he is hereby, authorized to make, execute, sign, and verify any and all instruments in writing necessary to be made in connection with said patent proceedings, and any document which it may be necessary to file in the land department of the United States in connection with and pertaining to such patent proceedings for and on behalf of this corporation.

This resolution was passed by unanimous vote.

Los Angeles, Cal., December 27, 1907.

I, B. Taylor, do hereby certify that I am the secretary of the hereinabove-named Q. E. Mining and Reduction Company, and that the foregoing is a true and correct copy of the resolution passed and adopted by the board of directors of said corporation at a meeting held upon the twenty-seventh day of December, A. D. 1907, as appears in the minute-book of records of said company.

Witness my hand and seal the day and year in this certificate first above written.

B. Taylor, [Seal]
Secretary.

Form 3.

NOTICE OF APPLICATION FOR PATENT.

Mineral Application No. ——.

In the United States Land-Office, Los Angeles, California.

United States Mineral Survey No. 4151.

In pursuance of the act of Congress approved May 10, 1872, the Q. E. Mining and Reduction Company, a corporation whose post-office address is —— Street, in the city of Los Angeles, state of California, does hereby give notice of its intention to make application for United States patent for the Q. E. Consolidated Quartz-Mine, embracing the "Monarch" and "Q. E." lodes. Said mining claims belong

to and are owned by said Q. E. Mining and Reduction Company, and are situate and lie in section ——, township —— north, range —— west, San Bernardino base and meridian, and in the —— mining district, in the county of Kern, state of California, and are numbered and designated as United States mineral survey No. 4151. Said claims are contiguous to and join each other, as more particularly described by the plat and field-notes posted herewith upon the premises.

The boundary lines of each of the hereinabove-mentioned lodes are as follows:

Monarch lode, beginning at cor. No. 1, identical with cor. No. 4 of U. S. survey No. 3657, —— lode, a redwood post 4 inches square, standing 3 feet aboveground in a mound of stone, and scribed "K—4—3957, and R. No. 1—4251," whence the NE. cor. sec. 6, T. 10 N., R. 12 W., S. B. B. & M., bears N. 47° 17′ E., 1535 ft., thence S. 80° 4′ W. 600.5 ft. to cor. No. 2; thence S. 2° 58′ E. 1496.4 ft. to cor. No. 3; thence N. 80° 4′ E. 600.5 ft. to cor. No. 4, whence a peak bears N. 33° W.; thence N. 3° 6′ W. 1496 ft. to cor. No. 1, the place of beginning.

Q. E. lode, beginning at cor. No. 1, whence the NE. cor. of sec. 6, T. 10 N., R. 12 W., S. B. B. & M., bears N. 27° 55′ E. 2294.27 ft.; a peak bears N. 14° 40′ E.; a peak bears N. 87° 38′ E.; thence S. 66° 48′ W. 600 ft. to cor. No. 2; thence S. 32° 50′ W. 660.5 ft. to cor. No. 3; thence N. 66° 48′ E. 600 ft. to cor. No. 4; thence N. 32° 50′ E. 660.5 ft. to cor. No. 1, the place of beginning.

Variations at all corners, 15° 15′ E.

The names of the adjoining and conflicting claims, as shown by said plat and survey, are the "K. B.," "M. B.," unsurveyed, and "Starboard," United States survey No. 3057.

Posted upon the ground this first day of June, A. D. 1907.

Q. E. Mining and Reduction Company,
By James Moor.

Witnesses to posting:
William Black.
James Brown.

Form 4.

PROOF OF POSTING NOTICE AND PLAT UPON THE CLAIM.

(Same Title as Form 3.)

Mineral Application No. ——.

United States Mineral Survey No. 4151.

State of California, }
County of Kern, } ss.

William Black and James Brown, each for himself, and not for the other, being first duly sworn according to law, upon his oath deposes and says: That he is a citizen of the United States over the age of twenty-one years, and was present upon the —— day of ——, A. D. 19—, when the plat representing the mining claims belonging to the Q. E. Mining and Reduction Company, a corporation, certified to as correct by the United States surveyor-general of the state of California, and designated by him as United States mineral survey No. 4151, together with the notice of intention of said Q. E. Mining and Reduction Company to apply for United States patent for Q. E. Consolidated Quartz-Mine, embracing the "Monarch" and "Q. E." lode mining claims, so platted and described upon said plat and mentioned in said notice so posted in a conspicuous place upon said Q. E. Consolidated Quartz-Mine upon the Q. E. lode, at the outside entrance to tunnel No. 3, where said plat and notice could be easily and readily seen and examined.

A copy of said notice so posted upon said claim as aforesaid is herewith attached and made a part of this affidavit.

WILLIAM BLACK.
JAMES BROWN.

Subscribed and sworn to before me this —— day of ——, A. D. 190—, at ——, in the hereinabove-mentioned county of Kern, in the state of California, and I hereby certify that I consider each of the above-named deponents credible and

reliable witnesses, and that the aforesaid affidavit and the notice attached were read by each of them before their signatures were affixed thereto, and the oath made by them.

[Notarial seal] —— ——

Notary Public in and for the County of Kern, State of California, duly commissioned and sworn.

Form 5.

APPLICATION FOR PATENT.

(Same Title as Form No. 3.)

In the Matter of Application for Patent by Q. E. Mining and Reduction Company for the Q. E. Consolidated Quartz-Mine.

United States Mineral Survey No. 4151.

Los Angeles, County of Los Angeles, State of California, } ss.

To the Register and Receiver of the United States Land-Office, Los Angeles, California.

James Moor, being duly sworn according to law, deposes and says upon his oath, That he is a citizen of the United States, and a resident of the city and county of Los Angeles, in the state of California, whose post-office address is —— Building, in said city.

That the Q. E. Mining and Reduction Company is a corporation created and existing under and by virtue of the laws of the territory of Arizona, said corporation having an office in the said city of Los Angeles, at No. —— Street, said office being the post-office address of said company. That the directors of said corporation are citizens of the United States, all of which more fully appears in the certified copy of the articles of incorporation of said company, filed herewith and made a part of this application.

That said Q. E. Mining and Reduction Company, by and through the affiant, hereby makes application for a United States patent for the Q. E. Consolidated Quartz-Mine, embracing the "Monarch" and "Q. E." quartz locations.

Said Q. E. Mining and Reduction Company is now in actual peaceful and undisturbed possession of said hereinabove-described Consolidated Quartz-Mine and every portion thereof, and is the owner of the same, and has the possessory right to the same by virtue of a compliance by it and its grantors with the local mining rules, the laws of the state of California, and the mining laws of Congress.

Said locations were made by citizens of the United States, and applicant, by and through divers and sundry conveyances, acquired all the right, title, estate, and interest which said locators had in and to said group of lode mining claims.

That, subsequent to the purchase by applicant from said locators, applicant has made amended locations on each and all of said hereinabove-mentioned lode claims.

Said property lies and is situated in the —— mining district (unorganized), in section ——, in township —— north, range —— west, San Bernardino meridian, in the county of Kern, in the state of California, and is more particularly described in the approved field-notes filed herewith, marked "Exhibit A," designated as mineral survey No. 4151, and the official plat of said survey marked "Exhibit B," both of said exhibits being a part of this application, and filed herewith in said land-office.

For further evidence of applicant's title to said hereinabove group of lode locations, reference is hereby made to the certified copies of location-notices of each of the said hereinabove-mentioned locations filed herewith, and to the abstract of title which will be filed by applicant in said land-office in a few days after the filing of this application.

As more particularly shown and described in said approved official field-notes and said plat before mentioned, applicant hereby expressly excludes and excepts from this application the following hereinafter-mentioned portion of said premises in conflict with the claims hereinafter mentioned, to wit:

2.32 acres in conflict with G. P. lode.

0.68 acres in conflict with M. B. lode.

On each of the said lode locations mentioned in this application, gold, and silver in rock in place has been discov-

ered, as more particularly shown by the instruments to be filed with this application. Applicant and its grantors have done and performed upon and for said hereinabove-mentioned mining claims more than one thousand dollars' worth of work, labor, and improvements, and the value of the work, labor, and improvements exceeds one thousand dollars; and during the year preceding, this applicant caused to be done and performed upon said premises more than two hundred dollars' worth of work and improvements.

Applicant hereby requests that United States patent be issued to it for said premises as hereinabove mentioned and described in said plat and field-notes.

JAMES MOOR.

Subscribed and sworn to before me this —— day of ——, A. D. 19—, and I hereby certify that I consider the above deponent a credible and reliable person, and that the foregoing affidavit was read and examined by him before his signature was affixed thereto and the oath made by him.

[Notarial seal] BYRON L. OLIVER,
Notary Public in and for the County of Los Angeles, State of California, duly commissioned and sworn.

Where application for patent is made for a mill site in connection with a lode claim, there should be inserted, "and the —— mill site, a piece of non-mineral ground occupied and used for mining, milling, and smelting purposes in connection with the said lode claim."

If the claim sought to be patented is a placer claim, and taken up by the government legal subdivisions, insert in the application the description of the land according to said subdivisions.

If the placer location is one that cannot be taken up and patented according to the legal subdivisions, it will, of course, have to be described, so far as the matter of surveys goes, the same as a lode location, with reference to its boundary lines.

Form 6.

ORDER OF PUBLICATION OF NOTICE.

Mineral Application No. 215.

United States Land-Office,

Los Angeles, California, —— —, 19—.

It is hereby ordered, That the notice of application for patent for the Q. E. Consolidated Quartz-Mine hereinbefore set forth, designated as mineral application No. 215, be published for nine consecutive weeks in the —— Gazette, a weekly newspaper printed and published in the town of ——, in the county of Los Angeles, in the state of California.

—— ——, Register.

Form 7.

PUBLISHER'S AGREEMENT.

Mineral Application No. 215.

——, California, —— —, 19—.

The —— Company, the owner and publisher of the —— Gazette, a weekly paper published in the said town of ——, does hereby agree to publish the notice of application for United States patent No. 215 for the Q. E. Consolidated Quartz-Mine, situate in the —— mining district, Kern County, California, as required by the act of Congress approved May 10, 1872, and to hold the Q. E. Mining and Reduction Company, the owner of said property, responsible for the amount of its bill and claim for publishing said notice.

It is hereby stipulated and agreed that no claim shall be made against the government of the United States, or its officers or agents, for such publication.

—— ——

—— ——

Form 8.

PROOF OF PUBLICATION OF NOTICE.

(Same Title as Form 3.)

Mineral Application No. 215.

State of California, }
County of Los Angeles, } ss.

F. Hays, being first duly sworn, upon his oath deposes and says: I am the manager of —— Gazette Company. Said company is the owner and publisher of the —— Gazette, a weekly newspaper published and printed in the town of ——, in the county of Los Angeles, in the state of California. Said newspaper is now, and was at all times herein mentioned, a newspaper of general circulation.

That in the matter of mineral application No. 215, in the United States land-office in the city of Los Angeles, county of Los Angeles, state of California, wherein Q. E. Mining and Reduction Company is an applicant for United States patent for the Q. E. Consolidated Quartz-Mine, being United States survey No. 4151, as more particularly set forth in the hereto-attached notice of application for patent, which said notice is made a part of this affidavit.

That said hereto-attached notice of application for patent was published in said hereinabove-mentioned newspaper once each and every week for nine consecutive weeks, the first publication being made upon the —— day of ——, A. D. 19—, and the last upon the —— day of ——, A. D. 19—.

That said newspaper was regularly printed, published, and issued, with said notice printed therein, upon the following dates, to wit: —— 14, 21, and 28, and —— 4, 11, 18, and 25, and —— 2, 9, and 16, 19—.

[Here paste in printed copy of the notice.]

Subscribed and sworn to before me this —— day of ——, 19—.

[Notarial seal] —— ——

Notary Public in and for the County of Los Angeles, State of California, duly commissioned and sworn.

Form 9.

PROOF THAT PLAT AND NOTICE REMAINED POSTED ON THE CLAIM DURING THE TIME OF PUBLICATION.

(Same Title as Form 3.)

Mineral Application No. 215.

State of California, }
County of Los Angeles, } ss.

James Moor, being first duly sworn according to law, upon his oath deposes and says: That he is the person designated, authorized, and empowered by the board of directors of the Q. E. Mining and Reduction Company, a corporation, to make, on behalf of said company, all necessary affidavits pertaining to said application for United States patent for the Q. E. Consolidated Quartz-Mine, being United States mineral survey No. 4151, and mineral application No. 215, as more particularly appears from the notice of intention to apply for patent and other instruments in writing embraced in the application. Said Q. E. Consolidated Mine is situated and lies in the —— mining district, in the county of Kern, in the state of California.

That the official plat of said premises, together with the said notice of intention to apply for United States patent therefor, was posted upon said Q. E. Consolidated Mine, upon, to wit, the Q. E. lode described in said notice and plat, and in a conspicuous place thereon, at, to wit, the outside entrance to tunnel No. 3, where said plat and notice could be easily and readily seen and examined, upon the —— day of ——, 19—, as more fully set forth and described in the affidavit of William Black and James Brown, now on file in said above-mentioned land-office with other papers in this application.

That the said plat and notice so mentioned and described remained continuously and conspicuously so posted as hereinabove mentioned, and at the same place where the same were posted as mentioned in the said affidavit of said William Black and James Brown, from the —— day of ——, A. D.

19—, up to and including the —— day of ——, A. D. 19—, during all of which time the said notice and plat could be readily seen and examined, and also including the sixty days' period during which notice of said application for patent was published in the newspaper known and called the —— Gazette, published and printed in the town of ——, in the said county of Los Angeles, in the state of California.

Deponent makes this affidavit for and on behalf of the within-named Q. E. Mining and Reduction Company, the said applicant for patent.

JAMES MOOR.

Subscribed and sworn to before me this —— day of ——, A. D. 19—; and I hereby certify that the foregoing affidavit was read to the said James Moor previous to his name being subscribed thereto, and that deponent is a reputable person, to whose affidavit full faith and credit should be given.

[Notarial seal] CARL A. JOHNSON,

Notary Public in and for the County of Los Angeles, State of California, duly commissioned and sworn.

Form 10.

STATEMENT OF FEES AND CHARGES.

(Same Title as Form 3.)

Mineral Application No. 215.

Q. E. Consolidated Quartz-Mine.

United States Mineral Survey No. 4151.

State of California, }
County of Los Angeles, } ss.

James Moor, being first duly sworn, deposes and says that the Q. E. Mining and Reduction Company, the applicant for patent for the Q. E. Consolidated Mine, mineral application No. 215, and United States survey No. 4151, has expended the following amounts in the prosecution of said application for patent:

——, 19—.

Paid United States surveyor-general for office expenses, stationery, etc	$75.00
Publishing notice of application for patent	20.00
United States land-office filing fee	10.00
Deputy United States surveyor, surveying and making plats	150.00
Abstract of title	40.00
Receiver United States land-office, Los Angeles, payment for land	135.00
Total	$430.00

The affiant further deposes and says that he is over and above the age of twenty-one years, and makes this affidavit for and on behalf of said applicant corporation, and is duly authorized to make the same pursuant to resolution of the board of directors of said corporation now on file with other papers with this application.

JAMES MOOR.

Subscribed and sworn to before me this —— day of ——, 19—; and I hereby certify that the above deponent read the foregoing statement before signing the same, and that deponent is a credible witness.

[Notarial seal] —— ——

Notary Public in and for the County of Los Angeles, State of California.

Form 11.

APPLICATION TO PURCHASE.

(Same Title as Form 3.)

Mineral Application No. 215.

Q. E. Consolidated Quartz-Mine.

United States Mineral Survey No. 4151.

To the Register and Receiver, United States Land-Office, Los Angeles, California.

The Q. E. Mining and Reduction Company, the applicant for patent for the Q. E. Consolidated Quartz-Mine, being mineral application No. 215, and United States survey No. 4151, as more fully appears by the papers now on file in the said land-office, including the plat and field-notes of said survey, under the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, and legislation supplemental thereto, does hereby apply to purchase the said Q. E. Consolidated Quartz-Mine, designated as said mineral survey and mineral application as hereinabove mentioned; said Q. E. Consolidated Quartz-Mine, as more fully appears by said field-notes and said plat, embraces an area of, and the amount of area claimed under this application is, 26.71 acres, and is situated in the —— mining district, in the county of Kern, in the state of California; said applicant, the Q. E. Mining and Reduction Company, does hereby agree to pay for said claim the sum of one hundred and thirty-five dollars, the legal price therefor.

Dated this —— day of ——, A. D. 19—.

Q. E. Mining and Reduction Company.

By James Moor.

I, —— ——, register of the United States land-office at Los Angeles, California, do hereby certify that the aforesaid mining claim, designated as mineral application No. 215 and United States mineral survey No. 4151, for the Q. E. Consolidated Quartz-Mine, is subject to entry by the herein-mentioned applicant, the Q. E. Mining and Reduction Company; the area embraced in said Q. E. Consolidated Quartz-Mine

is 26.71 acres, and the legal price thereof is one hundred and thirty-five dollars ($135.00).

Dated this —— day of ——, 19—.

—— ——, Register.

Form 12.

UNITED STATES PATENT. LODE CLAIM.

General Land-Office, No. 43347.

Mineral Certificate No. 252.

The United States of America.

To all to whom these presents shall come, Greeting.

Whereas, In pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, and legislation supplemental thereto, there have been deposited in the general land-office of the United States the plat and field-notes of survey and mineral certificate No. 252 of the register of the land-office at Los Angeles in the state of California, accompanied by other evidence, whereby it appears that the Blue Bells Mining and Milling Company did, on the fifteenth day of June, A. D. 1907, duly enter and pay for that certain mining claim or premises known as the Blue Bells Consolidated Quartz-Mine, consisting of the Blue Bells, ——, and —— lode mining claims, designated by the surveyor-general as lot No. 4152, embracing a portion of sections six and seven, in township ten north, range twelve west, San Bernardino meridian, in the Amalic mining district, in the county of Kern, and state of California, in the district of lands subject to sale at Los Angeles, and bounded, described, and platted as follows, with magnetic variation fifteen degrees and fifteen minutes east:

Beginning, for the description of the Blue Bells lode claim, at corner No. 1, a redwood post four inches square, three feet aboveground, marked "R. No. 1—4152 and K. 4—3857," in mound of stone identical with corner No. 4 of survey No. 3857, the Katherine lode claim, from which the northeast corner of section six, in township ten north, of range twelve west, San Bernardino meridian, bears north

forty-seven degrees and seventeen minutes east, one thousand five hundred and thirty-five feet distant;

[Here is inserted a very minute description of the property by metes, bounds, and courses.]

Now know ye, That there is therefore granted by the United States unto the said Blue Bells Mining and Milling Company, and to its successors and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Blue Bells, ——, and —— vein, lode, or ledge, and all other veins, lodes, and ledges, throughout their entire depth, the tops or apices of which lie inside of the surface boundary lines of said granted premises in said lot No. 4152 extended downward vertically, although such veins, lodes, or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises; provided, that the right of possession to such outside parts of said veins, lodes, or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 4152 so continued in their own direction that such planes will intersect such exterior parts of said veins, lodes, or ledges; and provided further, that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another;

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said grantee above named, and to its successors and assigns forever; subject, nevertheless, to the above-mentioned and to the following conditions and stipulations:

First. That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode, or ledge the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode, or ledge.

Second. That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

Third. That, in the absence of necessary legislation by Congress, the legislature of California may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the general land-office to be hereunto affixed.

Given under my hand at the city of Washington, the eighth day of January, in the year of our Lord one thousand nine hundred and eight, and of the independence of the United States the one hundred and thirty-second.

By the President: T. Roosevelt.

By F. M. McKean, Secretary.

C. W. Brush,

Recorder of the General Land-Office.

Recorded vol. 428, pp. 300 to 316, inclusive.

The above form of United States patent has been copied from an original recently issued by the government for a group of lode claims in Kern County, California, and, with the exception of the description, a change in the names, and the department numbers, it is a verbatim copy of the original, and will, we believe, be of some use to those wishing particularly to see what reservations, etc., are contained in the document giving the mine-owner a fee-simple title to his land.

FORMS OF NOTICES OR CERTIFICATES OF LOCATION IN DIFFERENT STATES AND TERRITORIES.

ALASKA.

(See p. 727.)

ARIZONA.

Form 13. Notice of lode location.
Form 14. Notice of location of placer claim.

CALIFORNIA.

(See p. 731.)

COLORADO.

Form 15. First or preliminary notice for posting.
Form 16. Notice of location of lode mining claim to be recorded.
Form 17. Preliminary notice of placer claim for posting.
Form 18. Certificate of placer location to be recorded.

IDAHO.

Form 19. Discovery-notice for posting on lode claim.
Form 20. Notice of location of lode claim.
Form 21. Placer location notice.

MONTANA.

Form 22. Notice of location of lode mining claim for posting.
Form 23. Certificate of location of lode mining claim to be recorded.
Form 24. Preliminary notice to be posted on placer claim.

NEVADA.

Form 25. Preliminary notice for posting on lode claim.
Form 26. Location-certificate of lode claim to be recorded.
Form 27. Notice of location for placer claim for posting.
Form 28. Certificate of location. Placer claim. To be recorded.

NEW MEXICO.

Form 29. Location-notice of lode claim.

NORTH DAKOTA.

Form 30. Preliminary notice for posting on lode claim.
Form 31. Certificate of location of lode claim to be recorded.

OREGON.

Form 32. Certificate of lode location.
Verification.

SOUTH DAKOTA.

Form 33. Certificate of register for posting.

UTAH.

Form 34. Certificate of location for lode claim.
Form 35. Placer location.

WASHINGTON.

Form 36. Notice for posting on lode claim.
Form 37. Notice of location of lode claim for recording.
Form 38. Notice for posting on ground of placer claim.
Form 39. Affidavit of location-work on placer claim.

WYOMING.

Form 40. Preliminary notice for posting.
Form 41. Certificate of location of lode claim.

ALASKA.

There are no statutory requirements as to what shall be contained in a location-notice or certificate of location for mining claims in Alaska. This seems to be left to the local rules and regulations, but the act of Congress requires that the notice or certificate of location be recorded within ninety days after the date of discovery.

See Chapter II, Part II, ante.

In the absence of local rules or regulations, any form given herein can be used with safety in Alaska.

ARIZONA.

Form 13.

NOTICE OF LODE LOCATION.

Know all men by these presents, That I, the subscriber, J. Cheever, a citizen of the United States, have made a discovery of a vein of valuable mineral-bearing rock in place at the point where this notice is posted, said vein carrying gold, silver, and other valuable deposits. And I hereby claim by right of discovery and location fifteen hundred linear feet of said vein, measured as hereinafter mentioned, and I do hereby locate and claim the same as a lode mining claim. At said point of discovery I have erected a monument of stones fully three feet high. In said monument of stones I have posted this notice of location.

This mining claim shall be known as, and is hereby named and called, the "May" lode mining claim. The general course of said vein is north and south. Said claim is fifteen hundred feet long, measured eight hundred feet north and seven hundred feet south from said point of discovery to each end of said claim, and is three hundred feet wide on either side of the middle of the vein, lode, or ledge, and is situated and lies upon unoccupied lands of the United States in the Bonny Bell mining district, in the county of Mohave, in the territory of Arizona. Said point of discovery and said discovery-monument is set five hundred feet in a northerly direction from a point where the county road crosses Green's Creek, and about a half-mile in an easterly direction from the shaft-house of the "Monarch" mine. Said claim is more particularly described with reference to its boundaries as follows: Beginning at corner No. 1, which is the southwest corner of the claim, there is set a wooden post four inches in diameter and four feet high, marked "M. S. W. cor."; thence running north fifteen hundred feet to a wooden post four feet high and four inches in diameter, at the northwest corner of said claim; said last-mentioned post is marked "M. N. W. cor."; thence running at right angles east three hundred feet to a wooden

post four feet high and four inches in diameter, at the north-end line of said claim, marked "M. N. E. P."; thence continuing in the same direction three hundred feet to a wooden post four feet high and four inches in diameter, at the northeast corner, marked "M. N. E. cor."; thence running south fifteen hundred feet to a wooden post four feet high and four inches in diameter, at the southeast corner, marked "M. S. E. cor."; thence running west three hundred feet to the south-end center, a monument four feet high, and four inches in diameter, marked "M. S. E. P."; thence upon the same course three hundred feet to the point of beginning, to wit, the southwest corner. Said southwest corner is situated in a northeasterly direction six hundred and fifty feet from the northeast corner of the "Bluebells" mining claim. Said northeast corner of said "May" lode mining claim is set five hundred feet south of a sandstone butte about one hundred and fifty feet high.

I claim ninety days from the date of this location in which to cause to be done or to do the necessary acts as required by the statutes of said territory of Arizona pertaining to the location of lode mining claims.

The date of the discovery of this claim is the twenty-fifth day of September, A. D. 1907. This location is made and this notice posted upon the ground upon said twenty-fifth day of September, 1907.

J. Cheever, Locator.

Form 14.

NOTICE OF LOCATION OF PLACER CLAIM.

Know all men by these presents, That we, the subscribers, F. McClure and W. A. Smith, citizens of the United States, do hereby claim by right of discovery and location, and in accordance with the Revised Statutes of Arizona and the statutes of the United States, a piece of ground embracing forty acres of unoccupied public land belonging to the United States, and claim the same as a placer mining claim, having made a discovery of valuable minerals thereon. Said claim

is situated in the county of Mohave, in the Bluebell mining district, in the territory of Arizona. We do hereby name and call the same the "Bonny Doon," Said claim embraces the northwest quarter of the northwest quarter of section ten, township six north, range twelve west, Gila River base and meridian. We have monumented said claim upon the surface, and it is bounded as follows, to wit: Commencing at the northwest corner of said section, at a post marked "B. D. N. W. cor."; thence running east one thousand three hundred and twenty feet to the northeast corner of said claim, to a wooden post four feet high, four inches in diameter, marked "B. D. N. E. cor."; thence running south one thousand three hundred and twenty feet to the southeast corner of said claim, to a wooden post four feet high and four inches in diameter, marked "B. D. S. E. cor."; thence running west one thousand three hundred and twenty feet to a wooden post four feet high and four inches in diameter, the southwest corner of said claim, marked "B. D. S. W. cor."; thence running north one thousand three hundred and twenty feet to the northwest corner of said claim, the point of beginning. Said northwest corner of said claim is one thousand feet south of the discovery-shaft house upon the "Highland Chief" quartz-mining claim.

This notice of location is posted upon a wooden post in the center of said claim. Each and all of these posts are of wood, four inches in diameter and four feet high, and set one foot in the ground.

Said claim was discovered and located this tenth day of September, A. D. 1907.

F. McClure,
W. A. Smith,
Locators.

CALIFORNIA.

There is no state statute requiring a notice of location in California, and none is required, except where the claim may be situated in a district where the local miners' rules may provide for the posting and the recordation.

But it is advisable, by all means, that a miner post a notice upon his claim and record a copy or duplicate of it in the office of the county recorder of the county where the claim is situated. Any of the forms given here will be sufficient.

COLORADO.

Form 15.

FIRST OR PRELIMINARY NOTICE FOR POSTING.

The subscriber, James Brown, a citizen of the United States, hereby gives notice, That he has discovered a vein of rock in place containing gold, copper, silver, and other valuable mineral deposits. At the point of such discovery he has erected a discovery-monument and posted upon such monument this notice.

That, under the laws of the United States and the statutes of the state of Colorado, he claims fifteen hundred linear feet of said lode. The general course of the lode is northwesterly and southeasterly, subscriber claiming seven hundred and fifty feet in a northerly direction from such point of discovery and seven hundred and fifty feet in a southerly direction from said point of discovery, and claiming one hundred and fifty feet on either side of the middle of said lode.

This vein or ledge is situated upon Monarch Mountain, in the Monarch mining district, in the county of Chaffee, and is called the Tam o' Shanter lode mining claim.

This discovery was made and this location-notice posted this twentieth day of September, 1907.

JAMES BROWN, Locator.

Form 16.

NOTICE OF LOCATION OF LODE MINING CLAIM TO BE RECORDED.

Be it known, That I, the subscriber, James Brown, a citizen of the United States, hereby state that upon the twentieth day of September, 1907, I discovered and located within the boundary lines of this claim, as hereafter described, a vein or ledge of rock in place containing gold, copper, silver, and other valuable mineral deposits, and posted thereon, upon said first-mentioned day, a preliminary or first notice of location required by the statutes of the state of Colorado; that by right of discovery and location I claim and located fifteen hundred feet, linear and horizontal measurement, on the said lode, along the same, with all its dips and angles, and one hundred and fifty feet in width on either side of the middle of said lode, at the surface, and all lodes and deposits and ground within the surface line of said claim, hereby claiming and locating by such right of discovery seven hundred and fifty feet on said vein running south 22° 47′ east from the center of the discovery-shaft upon said claim, and seven hundred and fifty feet running north 22° 47′ west from said center of the discovery-shaft.

The general course of said vein is northwesterly and southeasterly.

This claim is named and called the Tam o' Shanter lode mining claim, and is situated and lies upon the easterly side of Monarch Mountain, in the Monarch mining district, in the county of Chaffee, in the state of Colorado, and is more particularly described and bounded as follows, to wit: Beginning at corner No. 1, a wooden post four by four inches square, set in a low mound of rocks, and projecting three feet above the surface of the ground, marked "T. o' S. cor. No. 1"; thence running south 67° 3′ west three hundred feet to a like post, marked "T. o' S. cor. No. 2"; thence running south 22° 47′ east seven hundred and fifty feet to a similar post, marked "T. o' S. C."; thence, upon the same course, seven hundred and fifty feet to a similar post, marked "T. o' S. cor. No. 3";

thence north 67° 3′ east three hundred feet to a similar post, marked "T. o' S. cor. No. 4," whence a low peak bears south 55° 36′ west; a peak bears south 3° 52′ east and a peak bears south 64° 4′ east; thence north 22° 47′ west seven hundred and fifty feet to a similar monument, marked "T. o' S. C."; thence, upon the same course, seven hundred and fifty feet to the point of beginning. From said point of beginning a blazed pine-tree a foot and a half in diameter, marked "T. o' S.," bears north 10° west, and is 150 feet distant from the point of beginning.

The date of marking said boundaries of said claim is September 20, 1907, and the date of this notice or certificate of location and the date of completion of such location is this third day of October, 1907.

At the point of discovery I erected a substantial monument and sunk a shaft ten feet deep, measured from the lowest portion of the rim of such shaft.

JAMES BROWN, Locator.

Form 17.

PRELIMINARY NOTICE OF PLACER CLAIM FOR POSTING.

The subscriber, D. Morison, a citizen of the United States, hereby gives notice that he has made a discovery of valuable mineral on the ground where this notice is posted, and claims by right of such discovery and location twenty acres for placer mining purposes and as a placer mining claim.

Said claim shall be called the "Melbourne" placer mining claim, and is situated in the Wellsville mining district, in the county of Chaffee, in the state of Colorado.

The date of discovery and of this location is this twentieth day of September, 1907.

I claim thirty days from this date in which to record a certificate of location of said claim.

D. MORISON, Locator.

Form 18.

CERTIFICATE OF PLACER LOCATION TO BE RECORDED.

The subscriber, D. Morison, who is a citizen of the United States, gives notice and hereby certifies, That he discovered and located upon the twentieth day of September, 1907, within the boundary lines as hereinafter described, a valuable deposit of mineral, and what is commonly known as a placer deposit. That by right of such discovery and location he claims the "Melbourne" placer mining claim. Said claim is situate in the Wellsville mining district, in the county of Chaffee, in the state of Colorado, and contains twenty acres of land, and is particularly described and bounded as follows: Beginning at corner No. 1, which is the northwest corner of the claim, [begin here a description, giving the course of each boundary line, and if the land is upon unsurveyed ground, tie at least one of the corners of the claim to some natural object or permanent monument, as well as to a government corner, if a government corner is available. Placer locations must conform to the government legal subdivisions, unless it is impracticable to make them so conform].

This claim was discovered upon the twentieth day of September, 1907, and this certificate is dated this tenth day of October, 1907.

D. Morison, Locator.

IDAHO.

Form 19.

DISCOVERY-NOTICE FOR POSTING ON LODE CLAIM.

Know all men by these presents, That I, the subscriber, Wm. Sherry, a citizen of the United States, have discovered a vein of rock in place bearing gold, copper, and silver, and other valuable deposits, and at this point of discovery I have erected a monument of stones four feet high above the surface of the ground, upon which monument I have placed this notice. I do hereby call said claim the "June" lode mining claim.

The date of discovery of said claim is this tenth day of September, A. D. 1907, and I claim by right of discovery and location seven hundred and fifty feet of said lode and vein running east from this discovery-monument, and seven hundred and fifty feet running west from said monument.

Under the laws of the state of Idaho I claim ten days from the above-mentioned date of discovery in which to monument and mark the boundaries of said claim and to place a location-notice thereon.

The date of this location is said tenth day of September, 1907.

WM. SHERRY, Locator.

Form 20.

NOTICE OF LOCATION OF LODE CLAIM.

Know all men by these presents, That I, the subscriber, Wm. Sherry, a citizen of the United States of America, did, upon the tenth day of September, A. D. 1907, discover a ledge and lode of quartz-rock in place bearing gold, copper, silver, and other valuable deposits within the boundary lines of the hereinafter-described claim. This claim is named and called the "June" lode mining claim, and on said day, at the time of making such discovery, I erected a monument of stones three feet high above the surface of the ground, and at the point where I made such discovery, and upon which monument this notice is posted, I have placed thereon a notice containing the name of the claim, to wit, the "June" lode mining claim, the date of said discovery, to wit, the tenth day of September, 1907, and the name of the locator, Wm. Sherry, and stated in said notice that the distance claimed along and upon said lode and vein either way from said discovery-monument was seven hundred and fifty feet running east and seven hundred and fifty feet running west. Before the expiration of ten days from the date of said discovery, and on the eighteenth day of said month of September, 1907, I erected a monument at each corner of said claim, for the purpose of marking the boun-

daries thereof, and I so marked the boundaries of said claim at all its angles and at the side lines of the same by a post, marked upon the side of each post with the name of the claim and the corner or point which it indicates, and at the time I so marked the boundary of said claim I posted a copy of this notice of location upon said discovery-monument.

Said discovery-monument is situated five hundred and fifty feet northeast from the point where the county road crosses Miller Creek. I claim along and upon this vein, running south from said discovery-monument, seven hundred and fifty feet, and running north from said discovery-monument seven hundred and fifty feet, together with three hundred feet on either side of the center of said lode or vein.

Said claim and the boundary lines thereof are more particularly described as follows:

Beginning at the southwest corner of said claim, where I have erected a wooden post set firmly in the ground, standing four feet above the surface of the earth. Said wooden post is four inches in diameter, and is hewn upon the side facing the claim. Upon said side facing the claim I have marked the following: "J. S. W. cor." Said southwest corner monument is situate six hundred feet north of the junction of Shoshone and White Water creeks, and running north fifteen hundred feet to the northwest corner of said claim, where I have erected a like monument, and inscribed on the side facing the claim "J. N. W. cor."; running thence at right angles east six hundred feet to the northeast corner of said claim, where I have erected a like monument, and upon the side facing the claim have marked the same "J. N. E. cor."; running thence south at right angles fifteen hundred feet to the southeast corner of the claim, where I have erected a like monument, and upon the side facing the claim have marked "J. S. E. cor."; running thence at right angles west six hundred feet to the point of beginning, the said southwest corner.

Upon the discovery-monument of said claim I have posted a duplicate of this notice, located September 10, 1907.

The date of this certificate or notice of location is this eighteenth day of September, A. D. 1907.

Said "June" lode mining claim is situate and lies in the Shoshone mining district, in the county of Shoshone, in the state of Idaho. WM. SHERRY, Locator.

The statutory form of verification for certificates of location for the state of Idaho will be found at § 766, ante.

Form 21.

PLACER LOCATION NOTICE.

Be it known, That I, the subscriber, G. Jackson, a citizen of the United States of America, have discovered within the boundary lines of the hereinafter-described placer mining claim a valuable deposit of mineral, and by the right of discovery and location, and for the purpose of mining and developing said placer deposit, I do hereby locate the same. That at the date of the making of this location I erected at each corner of said claim substantial wooden posts, and upon each of said posts I have inscribed the name of the claim and mentioned the corner it represents. Upon the post which I so erected at the southwest corner of said claim I have posted this notice of location, and from said last-mentioned post an oak-tree three feet in diameter, marked "Bearing-tree Ben Lomond Placer," bears south forty feet distant.

I do hereby call and name said claim the "Ben Lomond" placer. Said claim contains twenty acres, and is six hundred and sixty feet wide and thirteen hundred and twenty feet long, and was discovered and located upon the twenty-fifth day of September, 1907.

It is situated and lies in the Twin Lakes mining district, in the county of Boise, in the state of Idaho.

[Description same as that for Arizona.]

I hereby claim fifteen days from said twenty-fifth day of September in which to make an excavation of one hundred cubic feet upon said claim, and within thirty days after said last-mentioned date to record what is substantially a copy of this notice of location. G. JACKSON, Locator.[1]

[1] The statute requires same kind of an affidavit to be attached to placer locations as that required for notice of lode claims.

MONTANA.

Form 22.

NOTICE OF LOCATION OF LODE MINING CLAIM FOR POSTING.

Be it known, That I, the subscriber, John Teal, a citizen of the United States, have upon this twenty-third day of September, 1907, discovered a vein of rock in place bearing gold, silver, and other valuable deposits; that I have posted at this point of discovery a written notice of location. Said notice is posted upon a wooden post four inches in diameter, standing three and a half feet above the surface of the ground at the point of discovery.

The general course of the vein is north and south, and I do hereby claim five hundred linear feet upon the lode or vein running north from the place of discovery, and one thousand linear feet running south from said point of discovery, and I do hereby further claim three hundred feet on either side of the center of said vein.

I have posted said notice upon said claim this said twenty-third day of September, 1907, and I do hereby name and call said claim the "Buena Vista" lode mining claim.

Located September 23, 1907.

JOHN TEAL, Locator.

Form 23.

CERTIFICATE OF LOCATION OF LODE MINING CLAIM TO BE RECORDED.

Be it known, That I, the subscriber, John Teal, a citizen of the United States, did, upon the twenty-third day of September, 1907, discover a vein of rock in place carrying gold, silver, and other valuable deposits. That on said day I located the same, and on said day posted a notice of location at the place of discovery, in compliance with and pursuant to the Political Code of the state of Montana, as amended by the act approved February 18, 1907. Said notice contained the name of the claim, to wit, the "Buena Vista," also the

name of the locator, myself, the date of the location, and the date of the posting of such notice, and the approximate dimensions of area of said claim intended to be appropriated.

Within thirty days after said discovery of said claim and the date of the said posting of such notice at the point of discovery of said claim, I distinctly marked the boundary lines of said claim upon the ground, so that its boundaries can be readily traced, by placing at each corner of said claim a wooden post four inches square by four feet six inches in length, set one foot in the ground, and surrounded each of said posts with a mound of stone four feet in diameter and two feet in height above the natural surface of the ground. [Here should be inserted a description of the claim similar to that stated in form for Arizona, Form 13, ante, and continuing:] Within sixty days after said discovery and posting of said notice, I sunk a shaft upon said vein, at the point of discovery. Said shaft is fully ten feet in depth, vertically, below the lowest part of the rim of such shaft at the surface. In such shaft I disclosed a vein in place, containing gold and other valuable deposits. The cubical contents of said shaft is fully one hundred and fifty cubic feet. The said claim is named and called the "Buena Vista" lode mining claim, and I, John Teal, am the locator thereof.

That the general direction and course of the vein each way from the discovery-shaft is north and south, and I claim five hundred feet along said vein running north from the said discovery-shaft, and one thousand feet along said vein running south, and three hundred feet in width on each side of the center of said vein. [It is optional with the locator to set forth in the certificate of location a description of the discovery-work and the corner-monuments and the workings thereon, but we believe it is good practice to state these things in the certificate of location.] Said claim is situated and lies on the easterly slope of Ball Mountain, in the county of Granite, in the Silver Plume mining district, in the state of Montana.

Dated this fifth day of November, 1907.

JOHN TEAL, Locator.

State of Montana, } ss.
County of Granite, }

John Teal, being first duly sworn, upon his oath deposes and says: I am the locator of the "Buena Vista" lode mining claim, named in the foregoing certificate of location. The facts set forth in said certificate of location are true.

JOHN TEAL.

Subscribed and sworn to before me this fifth day of November, 1907.

[Notarial seal] JAS. ROGERS,
Notary Public in and for the County of Granite, in the State of Montana.

Form 24.

PRELIMINARY NOTICE TO BE POSTED ON PLACER CLAIM.

Be it known, That I, the subscriber, Ott Heizer, a citizen of the United States, have upon this twentieth day of September, 1907, made a discovery of a valuable deposit of gravel, having a commercial value of gold and other minerals, and at the point of discovery I have posted this notice, and I do hereby call and name this claim the "Golden Scepter" placer mining claim. I do hereby claim the same as a placer mining claim, and the amount of land claimed by this location and by right of such discovery is twenty acres. Posted on the ground and dated this twentieth day of September, 1907.

Located September 20, 1907.

OTT HEIZER, Locator.[2]

[2] **The notice or certificate of location for recording of a placer claim** may be the same as that set forth for the lode claim, except that instead of reciting that a vein or lode has been discovered, state that a deposit of gravel or other minerals has been discovered containing gold and other valuable deposits, having a commercial value; and state the number of acres of ground contained or claimed in the location, which, for one locator, must not exceed twenty acres. The location of the discovery-shaft, cut, or tunnel on the placer must be given. The description of the placer claim as given in Form 14, for Arizona, is sufficient.

This certificate for the placer must be verified in the manner and form prescribed for lode claims.

NEVADA.

Form 25.

PRELIMINARY NOTICE FOR POSTING ON LODE CLAIM.

Be it known, That I, the subscriber, Joe Morris, a citizen of the United States, did upon this twenty-third day of September, 1907, make a discovery of a vein of rock in place bearing gold, silver, and other valuable deposits; that I have posted at this point of discovery a written notice of location. Said notice is posted upon a wooden post four inches in diameter, standing three and a half feet above the surface of the ground at the point of discovery.

The general course of the vein is north and south, and I do hereby claim six hundred linear feet upon the lode or vein running north from the place of discovery, and nine hundred linear feet running south from said point of discovery, and I do hereby further claim three hundred feet on either side of the center of said vein; and I have posted said notice upon said claim this said twenty-third day of September, 1907, and I do hereby name and call said claim the "Flossmoor" lode mining claim.

Located September 23, 1907.

JOE MORRIS, Locator.

Form 26.

LOCATION-CERTIFICATE OF LODE CLAIM TO BE RECORDED.

Be it known, That I, the subscriber, Joe Morris, a citizen of the United States, did, upon the twenty-third day of September, 1907, discover a vein or lode of rock in place bearing gold, silver, and other valuable metals; that I so located said claim upon said day as follows:

That at the place of discovery I posted a notice in writing. Said notice contained the name of the lode, to wit, the "Flossmoor" lode mining claim, the name of the locator, the date of the location, and the number of linear feet claimed along and over and upon the said vein each way from the place of discovery, and stated, also, the width claimed on either side of

the center of the vein, and also set forth the general course of said vein or lode, and within twenty days from the date of such discovery and the posting of such notice, I defined the boundary lines of said claim by placing at each corner and at the center of each side line a wooden post four inches in diameter. Said posts are four feet six inches in length and set one foot in the ground.

The general course of said lode or vein is north and south, and the number of linear feet which I claim in length along and upon the course of the vein each way from the point of discovery is as follows: I claim six hundred feet running north from the discovery-shaft upon said claim, and nine hundred linear feet running south from said discovery-shaft upon said vein, and I also claim three hundred feet in width on each side of the center of said vein.

Within ninety days from the date of said discovery and location of said claim I sunk thereon said discovery-shaft to a depth of fully ten feet from the lowest part of the rim of such shaft at the surface of the ground. Said shaft is four feet wide by six feet in length. I exposed therein a vein of rock in place bearing gold, silver, and other valuable deposits. Said shaft is situated six hundred feet from the north-end line of said claim and nine hundred feet from the south-end line of said claim, and three hundred feet from either of side lines of said claim. The boundary lines of said claim are as follows, to wit: Beginning at the southwest corner of said claim, at a point one thousand feet southwest from where the Tonopah and Tidewater Railroad track crosses Quartz Creek, and from said southwest corner an oak-tree two feet in diameter, blazed and marked "F. B. T.," bears west eighty-five feet distant; at said southwest corner is situated a wooden post four inches in diameter, four and a half feet long, and set one foot in the ground, and marked "F. S. W. cor."; running thence from said southwest corner north seven hundred and fifty feet to a wooden post four inches in diameter, four and one half feet long, and set one foot in the ground, and marked "F. W. C. S. P."; thence continuing in the same course north seven hundred and fifty feet to the northwest corner of said claim to a wooden post four inches

in diameter, four and one half feet long, set one foot in the ground, and marked "F. N. W. cor."; thence running at right angles east six hundred feet to the northeast corner of said claim, to a post four inches in diameter and four and one half feet long, set one foot in the ground, and marked "F. N. E. cor."; thence running south seven hundred and fifty feet to a wooden post, four inches in diameter and four and one half feet long, set one foot in the ground, and marked "F. E. C. S. P."; thence continuing in the same direction south seven hundred and fifty feet to the southeast corner of said claim, to a post four and one half feet in length, four inches in diameter, and set one foot in the ground, and marked "F. S. E. cor."; thence running at right angles west six hundred feet to the aforementioned southwest corner of the claim, the place of beginning. From said northeast corner a granite butte one hundred feet high bears north one thousand feet distant. The marking of said boundaries was completed October 7, 1907.

Situated in the Tidewater mining district, in the county of Nye, state of Nevada.

The date of this certificate is this fifteenth day of November, 1907. JOE MORRIS, Locator.

Form 27.

NOTICE OF LOCATION FOR PLACER CLAIM FOR POSTING.

Be it known, That I, the subscriber, W. O. Martin, a citizen of the United States, have upon this twenty-fifth day of September, A. D. 1907, discovered a deposit of gravel containing gold and other valuable minerals. That I have upon this said day located the same as a placer mine. I hereby claim in my said location a piece of ground six hundred and sixty feet by one thousand three hundred and twenty feet, containing twenty acres. I do hereby call the said claim the "Rose" placer mining claim, and I do hereby claim said piece of ground by right of discovery and location. Located this said twenty-fifth day of September, A. D. 1907. I have posted this notice upon a wooden post at the point of discovery on said claim. W. O. MARTIN, Locator.

Form 28.

CERTIFICATE OF LOCATION. PLACER CLAIM. TO BE RECORDED.

Know all men by these presents, That I, the subscriber, W. O. Martin, a citizen of the United States, did, upon the twenty-fifth day of September, A. D. 1907, discover a deposit of gravel containing gold and other valuable minerals, and upon said day did locate a piece of ground where I made such discovery, and I hereby claim in my location an area of surface one thousand three hundred and twenty feet long by six hundred and sixty feet in width, containing twenty acres, and upon said day did locate same as a placer mining claim, and I do hereby designate the same as a placer mining claim. I do hereby name and call the said claim the "Rose" placer claim.

Subsequent to such discovery and location of said claim, and within ninety days after posting the notice of location thereon, I performed work and labor upon said claim for the development thereof, and said work and labor is of the value of not less than twenty dollars.

Said work consists of sinking a shaft to a depth of eight feet. Said shaft is four by six feet and is situated in the center of said claim.

Said placer claim is situate and lies in the Eureka mining district, in the county of Eureka, in the state of Nevada.

I located said claim upon said twenty-fifth day of September, 1907, by posting a notice upon a wooden post at the point of discovery. Said point of discovery is in the center of said claim. It is the same point where I have performed the work above mentioned. The said notice so posted contains the name of the claim, to wit, the "Rose" placer claim. The name of the locator, myself, W. O. Martin; the date of the location, to wit, September 25, A. D. 1907; and the area of ground claimed, to wit, one thousand three hundred and twenty feet long by six hundred and sixty feet in width, containing twenty acres.

I marked the boundary lines of said claim by erecting at each of the four corners of the same and at each side center

line a wooden post four inches in diameter and four and one half feet long, and set one foot in the ground, said boundary lines being more particularly described as follows: Beginning at a point five hundred and thirty-five feet east of the discovery-shaft house of the "Mojave" lode mining claim, and three hundred and twenty-five feet north of a limestone butte fifty feet high. At said point of beginning, which is the southwest corner of the claim, one of said posts is erected, marked "R. S. W. cor."; running thence north six hundred and sixty feet to a like post, upon which is marked "R. W. C. S. P."; thence continuing in the same course north six hundred and sixty feet to a like post at the northwest corner of the claim, and marked "R. N. W. cor."; thence continuing at right angles east six hundred and sixty feet to a like post, which is the northeast corner of the claim, said post being marked the "R. N. E. cor."; running thence at right angles south six hundred and sixty feet to a like post, marked "R. E. C. S. P."; continuing in the same direction south six hundred and sixty feet to a like post, marked "R. S. E. cor.," which is the southeast corner of the claim; running thence at right angles west six hundred and sixty feet to the point of beginning. Said post at said place of beginning is marked "R. S. W. cor." 2*

Dated October 6, 1907.

W. O. Martin, Locator.

NEW MEXICO.

Form 29.

LOCATION-NOTICE OF LODE CLAIM.

Be it known, That I, the subscriber, Arthur Ames, a citizen of the United States of America, by right of discovery and location, have upon this twenty-fifth day of September, A. D. 1907, discovered a vein and lode of rock in place carrying gold, silver, copper, and other valuable deposits. Said vein was discovered by me on said above-mentioned date, and

2* If upon surveyed land, and it is practicable to do so, should conform to the government survey.

which lode mining claim I have called and do hereby name the "Golden Dream" lode. It is my intention to locate said claim pursuant to the laws of the territory of New Mexico. Said claim is more particularly described and bounded as follows: Beginning at a point twelve hundred feet north from the east end of the bridge where the county road crosses Willow Creek, and five hundred feet east of a granite butte one hundred feet high. At said point of beginning I have erected a substantial wooden post and marked it "G. D. S. W. cor."; thence running north seven hundred and fifty feet to the west-center side-line post, marked "G. D. W. S. L."; thence in the same direction seven hundred and fifty feet to a post at the northwest corner, marked "G. D. N. W. cor."; thence running at right angles east three hundred feet to a post in the center of the north-end line, marked "G. D. N. E. L. P."; thence continuing in the same direction three hundred feet to a post at the northeast corner of said claim, said post being marked "G. D. N. E. cor."; thence at right angles south seven hundred and fifty feet to the east-side center-line post, marked "G. D. E. S. L."; thence continuing in the same direction seven hundred and fifty feet to a post at the southeast corner, marked "G. D. S. E. cor."; thence running west three hundred feet to a post marked "G. D. S. E. L. P."; thence continuing in the same direction three hundred feet to said southwest corner, the place of beginning. From the northeast corner of said claim an oak-tree three feet in diameter, blazed and marked "B. T. G. D. N. E. cor.," bears east twenty-five feet.

Said lode mining claim is situated and lies in the San Gabriel mining district, in the county of Santa Fe, in the territory of New Mexico.

ARTHUR AMES, Locator.

NORTH DAKOTA.

Form 30.

PRELIMINARY NOTICE FOR POSTING ON LODE CLAIM.

Be it known, That I, the subscriber, J. Meyer, a citizen of the United States, have upon this twenty-eighth day of September, A. D. 1907, discovered and located a vein of mineral rock in place containing gold, silver, and other valuable deposits.

I hereby claim seven hundred and fifty feet on said lode north from the point of discovery, and seven hundred and fifty feet south from said place of discovery, upon said vein. At the point of discovery this notice is posted, and I claim one hundred and fifty feet on each side of the center of said vein.

I hereby name said claim the "Hilda" lode mining claim.

Said lode claim is situated and lies on the north side of Middlefork Gulch, in the White Pine mining district, in the county of Pembina, in the state of North Dakota.

I have posted said notice above mentioned upon this twenty-eighth day of September, 1907.

J. Meyer, Locator.

Form 31.

CERTIFICATE OF LOCATION OF LODE CLAIM TO BE RECORDED.

Be it known, That upon the twenty-eighth day of September, 1907, the subscriber, J. Meyer, a citizen of the United States, discovered and located a vein or lode of rock in place bearing gold, silver, and other valuable mineral deposits.

That subsequent to the discovery of said vein, I completed the location of the same by sinking a discovery-shaft thereon to a depth of fully ten feet below the lower side of the surface, and disclosed in said shaft a well-defined vein in place carrying gold, silver, and other valuable minerals, and at the place of discovery, on the surface of said claim, I posted a prelim-

inary notice of location, in compliance with the provisions of the Revised Code of North Dakota, and also marked the boundary lines of said claim as required by the provisions of said code.

The general course of said vein is north and south, and I claim seven hundred and fifty linear feet on said vein north of the center of said discovery-shaft, and seven hundred and fifty linear feet on said vein south of the center of said discovery-shaft, and one hundred and fifty feet on each side of the center of said vein.

The said claim is more particularly bounded and described as follows: Beginning at a point where I have erected a wooden post hewn on the side toward the claim, and marked "Hilda lode S. W. cor.," which said post is the southwest corner of said claim. Said corner is five hundred feet east of the point where the north fork of White Pine Creek joins the main stream. Beginning at said corner and running thence north seven hundred and fifty feet to a post hewn on the side toward the claim, and marked "Hilda lode west side line post"; thence running in the same direction seven hundred and fifty feet to a wooden post hewn on the side toward the claim, and marked "Hilda lode northwest cor."; thence at right angles running east one hundred and fifty feet to a wooden post hewn on the side toward the claim, and marked "Hilda lode north-end line post"; then continuing in the same direction one hundred and fifty feet to a wooden post hewn on the side toward the claim, marked "Hilda lode northeast cor."; running thence south seven hundred and fifty feet to a wooden post hewn on the side toward the claim, marked "Hilda lode east side line post"; thence continuing in the same direction, running seven hundred and fifty feet to the southeast corner of said claim to a wooden post hewn on the side toward the claim, and marked "Hilda lode southeast cor."; thence running at right angles west one hundred and fifty feet to a wooden post hewn on the side toward the claim, marked "Hilda lode south-end line post." Continuing running in the same direction one hundred and fifty feet to the said southwest corner

of said claim, the place of beginning. All of said posts are firmly set in the ground.

I claim said lode with all its spurs and dips and the surface-ground within said boundary lines.

The said claim as mentioned in said preliminary notice I hereby name and call "Hilda" lode mining claim.

Dated this twenty-fifth day of October, 1907.

J. MEYER, Locator.[28]

OREGON.

Form 32.

CERTIFICATE OF LODE LOCATION.

Be it known, That I, the subscriber, Richard Hutchings, a citizen of the United States, have upon this twentieth day of September, 1907, claimed by right of discovery and location fifteen hundred linear feet upon the "Peter Pan" lode mining claim and along the vein thereof, with all its dips, spurs, and angles, and do also claim three hundred feet wide on either side of the center of said vein, and all other deposits and ledges within the boundary lines of said claim. Said vein contains gold, silver, and other valuable mineral deposits in rock in place. I discovered the same upon the above-mentioned date and located the same upon said day. The general course of the lode is north and south, and I claim seven hundred and fifty feet running north from the point of discovery upon said vein, and seven hundred and fifty feet running south from the point of discovery upon said vein. I have defined the boundary lines of said claim by erecting at each of the four corners of the same and at the center of each end line a wooden post four inches in diameter, standing three feet above the surface of the ground. Said claim is more particularly bounded as follows, to wit: Beginning at the southwest corner of said claim, where is placed one of said six monuments, with

[28] The statutes of South Dakota are silent in regard to placer mining locations, so that if the locator of this class of claims use any of the forms set out herein, this is all that is necessary.

the inscription on the same as follows: "P. P. S. W. cor." Said southwest corner of said claim is situated seven hundred and fifty feet east from the intersection of the railroad right of way of the B. B. Railroad Company and the county road; running thence from said southwest corner north fifteen hundred feet to the northwest corner of the claim to a like monument, inscribed "P. P. N. W. cor."; running thence at right angles east three hundred feet to a like monument, and inscribed "P. P. N. E. L."; continuing upon the same course three hundred feet to the northeast corner of said claim to a like monument, inscribed "P. P. N. E. cor."; running thence at right angles south fifteen hundred feet to the southeast corner of said claim to a like monument, inscribed "P. P. S. E. cor."; running thence at right angles west three hundred feet to a like monument, inscribed "P. P. S. E. L."; continuing thence on the same course three hundred feet to the point of beginning.

The date of completion of monumenting said claim is September 30, 1907.

Said claim is situated and lies in the Jerome Verde mining district, in the county of Linn, in the state of Oregon.

RICHARD HUTCHINGS, Locator.

VERIFICATION.

State of Oregon, }
County of Linn, } ss.

Richard Hutchings, first being duly sworn, upon his oath deposes and says that he is the locator of the foregoing hereinmentioned "Peter Pan" lode mining claim, and is the locator named in the notice of location thereof. That within sixty days from the date of the posting of the notice of location upon the said "Peter Pan" lode mining claim, he performed the location-work as required by statute, by sinking a discovery-shaft thereon, at the point of discovery upon said claim, to a depth of ten feet, measured from the lowest rim of said shaft at the surface of the ground, and exposed in said shaft a vein of rock in place carrying gold and other valuable deposits.

Subscribed and sworn to before me this fifth day of November, 1907.

[Notarial seal] CHAS. WILLIAMS,

Notary Public in and for the County of Linn, in the State of Oregon.[3]

SOUTH DAKOTA.

South Dakota statute is same as statute of North Dakota [3a] with reference to the requirements as to the contents of both the preliminary and second notice of certificate, except that in South Dakota the locator is allowed three hundred feet in width on each side of the center of the vein or crevice, and there must be a register's certificate for posting. The forms above given for North Dakota are suitable and can be used in locating a claim in South Dakota, but in the latter state it is necessary to have a certificate of the register in the following form:[4]

Form 33.

CERTIFICATE OF REGISTER FOR POSTING.

Be it known, That I, the subscriber, L. Scott, the duly qualified and acting register of deeds in and for the county of Hand, in the state of South Dakota, do hereby certify that upon the twenty-eighth day of October, 1907, there was filed in my office as such register, for record, a certificate of location of the "Golden Shower" quartz-mining claim, located by Wm. Morison. Said certificate of location of said lode mining claim now stands on record in my said office, in book "R" of mining certificates, at page 350, of the records of said county.

[3] It seems that the laws of Oregon do not require any particular form or statement to be set forth in the certificate or notice of location of a placer mining claim; hence any of the forms herein stated for placer locations will be sufficient.

[3a] See ante, § 980.

[4] There appears to be nothing in the statutes of North Dakota in regard to the contents of the location-certificate of a placer mining claim; hence any of the forms set forth in this work will be found amply sufficient for use in this state.

In witness whereof, I have hereby set my hand and official seal this twenty-eighth day of October, A. D. 1907.

[Seal] L. SCOTT,

Register of Deeds in and for the County of Hand, State of South Dakota.

UTAH.

Form 34.

CERTIFICATE OF LOCATION FOR LODE CLAIM.

Be it known, That I, the subscriber, Andrew Martin, a citizen of the United States, did on this twelfth day of September, 1907, discover a vein of rock in place bearing gold, silver, and other valuable metals, and on said day located the same.

The said claim is situated and lies in the Wasatch mining district, in the county of Kane, in the state of Utah, on the westerly slope of Dome Mountain. The general course of said vein is north and south, and I do hereby claim by right of discovery and location fifteen hundred linear feet along said vein, with all its dips, angles, and variations. I claim three hundred feet on either side of the center of said vein or lode, and all deposits and surface-ground within the boundary lines of said claim. I claim six hundred feet running north from this point of discovery on said vein and along the course thereof, and nine hundred feet from said point of discovery running south along and over and upon said vein.

Said claim is more particularly described as follows, to wit: Commencing at corner No. 1, which is the southwest corner of said claim, from which corner the shaft-house of the "Raymond" lode mining claim bears south two hundred feet distant, and the junction of Bingham and Cinnabar creeks bears northwest five hundred feet. At said southwest corner I have erected a wooden post four inches in diameter, firmly set in the ground, and standing three feet above the surface of the earth, and have marked thereon

"G. W. S. W. cor."; running thence from said corner north fifteen hundred feet to the northwest corner of said claim, to a wooden monument four inches in diameter, firmly set in the ground, and standing three feet above the surface of the earth, inscribed "G. W. N. W. cor."; running thence at right angles east six hundred feet to the northeast corner, to a like monument, inscribed "G. W. N. E. cor."; running thence south fifteen hundred feet to the southeast corner of the claim, to a like monument, inscribed "G. W. S. E. cor."; running thence at right angles six hundred feet west to the place of beginning.

From the said northeast corner of said claim the discovery-shaft of the "Shenandoah" lode mining claim, United States survey lot No. 1250, bears north forty-five degrees east five hundred feet.

The said claim is hereby called and named the "Golden Wonder" lode mining claim.

The date of this location and this discovery is the twelfth day of September, 1907.

ANDREW MARTIN, Locator.

Form 35.

PLACER LOCATION.

Know all men, That I, the subscriber, John Cobb, a citizen of the United States, have upon this twelfth day of September, 1907, made a discovery of gold-bearing gravel containing gold, silver, and other valuable deposits, and I do hereby claim by right of discovery and location the "Emagene" placer mining claim. Said claim is situated and lies in the Uinta mining district, in the county of Uinta, in the state of Utah. Said claim contains twenty acres, being one thousand three hundred and twenty feet long by six hundred and sixty feet wide, and is situate upon surveyed lands of the United States, and embraces the north half of the northeast quarter of the northeast quarter of section eleven, township ——, range ——, —— base and meridian, and is more particularly bounded as follows:

Beginning at the northeast corner of said claim, at a wooden monument three feet high and four inches in diameter, marked "E. N. E. cor."; running thence south along the line between said section eleven and section twelve, six hundred and sixty feet to the southeast corner of said claim, to a like monument, inscribed "E. S. E. cor."; running thence west one thousand three hundred and twenty feet to the southwest corner of said claim, to a like monument, inscribed "E. S. W. cor."; running thence north six hundred and sixty feet to a like monument, inscribed "E. N. W. cor."; running thence east along the boundary line between said section eleven and section two, one thousand three hundred and twenty feet to the place of beginning.

I have placed a copy of this notice upon a substantial wooden monument at the point of discovery in said claim upon this twelfth day of September, 1907.

The date of this location and the date of said discovery is the said twelfth day of September, 1907.

JOHN COBB, Locator.

WASHINGTON.

Form 36.

NOTICE FOR POSTING ON LODE CLAIM.

Be it known, That I, the subscriber, Charles Foreman, a citizen of the United States, on this fifteenth day of September, 1907, have discovered a vein of rock in place bearing gold, silver, and other valuable deposits, and at this place of discovery I have posted this notice upon said day.

I do hereby call and name the same the "Foreman" lode mining claim, and I do hereby claim seven hundred and fifty feet along and upon said vein either way from this point of discovery. The general course of the vein is north and south.

The date of this location and of this discovery is September 15, 1907. CHARLES FOREMAN, Locator.

Form 37.

NOTICE OF LOCATION OF LODE CLAIM FOR RECORDING.

Be it known, That I, the subscriber, Charles Foreman, did upon the fifteenth day of September, 1907, discover and locate a vein of rock in place carrying gold, silver, and other valuable deposits; that I named and called said claim the "Foreman" lode mining claim, and such is the name of said claim. I claim seven hundred and fifty linear feet running north from the said point of discovery upon the said claim, and seven hundred and fifty feet along and upon said vein running south from the point of discovery, and three hundred feet in width on each side of the center of said vein. The general course of said vein or lode is north and south.

Before filing this notice for record, and within ninety days after said discovery of said claim, I sank upon said vein to a depth of fully ten feet from the lowest part of the rim at the surface a shaft, and marked the surface boundaries of said claim by placing substantial wooden posts at each corner of said claim, and upon each of said posts is inscribed the name of the claim and date of the location thereof; each and all said posts are three feet high above the surface of the ground, and are fully four inches in diameter, and are set in the ground in a substantial manner.

The boundary lines of said claim are more particularly described as follows: Beginning at the southwest corner of said claim, which is situated six hundred feet north from the junction of the south fork with the main stream of Alpine Creek; said corner is also situated twelve hundred feet east from the discovery-shaft house of the "Wyoming" lode claim. At said southwest corner is a wooden post three feet high above the surface of the earth, set firmly in the ground, fully four inches in diameter, and there is inscribed thereon the name of said claim, to wit, "Foreman," with the date of the location, to wit, "September 15, 1907, S. W. cor."

Running thence from said monument north fifteen hundred feet to the northwest corner of said claim, to a like post set

firmly in the ground, and three feet above the surface thereof, four inches in diameter, and inscribed with the name of the claim, to wit, "Foreman," with the date of the location thereof, to wit, "September 15, 1907, N. W. cor."

Thence running east six hundred feet to a like post set firmly in the ground, three feet in height above the surface of the earth, four inches in diameter, and the name of the claim written thereon, with the date of the location, to wit, "Foreman. Located September 15, 1907, N. E. cor."

Running thence south fifteen hundred feet to a like post set firmly in the ground, and standing three feet above the surface of the earth, four inches in diameter, with the name of the claim and the date of the location written thereon, to wit, "Foreman. September 15, 1907, S. E. cor."

Running thence six hundred feet west to the place of beginning.

Said claim is situate and lies in the Cima mining district, in the county of King, in the state of Washington.

Dated this fifteenth day of November, 1907.

CHARLES FOREMAN, Locator.

Form 38.

NOTICE FOR POSTING ON GROUND OF PLACER CLAIM.

Be it known, That I, the subscriber, William Jones, a citizen of the United States, have discovered a deposit of gold-bearing gravel upon this fifteenth day of September, 1907, and I have called and named this claim the "Cinderella" placer mining claim, and upon said above-mentioned date, at the point of discovery, I have posted this notice, and said date is the date of the location of said claim. Said claim is upon surveyed land belonging to the United States, and embraces the north half (½) of the northeast quarter (¼) of the northeast quarter (¼) of section six (6), township —— north, range —— west, —— base and meridian.

I claim same by right of discovery and location and for purposes of placer mining.

I have marked the boundary lines of said claim by erecting at each one of the four corners a substantial wooden post firmly set in the ground, and standing three feet above the surface of the earth, four inches in diameter, and upon each of said posts I have inscribed the name of the claim and the date of the location thereof, to wit, "Cinderella, September 15, 1907."

Said placer claim is located in the St. Elmo mining district, in the county of Whatcom, in the state of Washington.

The date of this certificate is this fifteenth day of September, 1907.

WILLIAM JONES, Locator.

Form 39.

AFFIDAVIT OF LOCATION-WORK ON PLACER CLAIM.

State of Washington, } ss.
County of Whatcom, }

William Jones, being first duly sworn, deposes and says, That he is the locator and owner of the "Cinderella" placer mining claim; that he discovered and located said claim on the fifteenth day of September, 1907; that within sixty days from the date of said discovery and location he performed labor in developing said claim to the value, equivalent, and aggregate of the sum of ten dollars.

Said claim is located and lies in the St. Elmo mining district, in the county of Whatcom, in the state of Washington.

WILLIAM JONES.

Subscribed and sworn to before me this fifth day of November, 1907.

[Notarial seal] E. GEDGE,
Notary Public in and for the County of Whatcom, State of Washington.

WYOMING.

Form 40.

PRELIMINARY NOTICE FOR POSTING.

Know all men, That I, the subscriber, Albert Sawbridge, a citizen of the United States, do hereby declare that on the twentieth day of September, A. D. 1907, I discovered a vein of rock in place carrying gold, silver, and other valuable minerals and deposits, and have upon said day located said vein, claiming seven hundred and fifty feet north from this point of discovery upon and along said vein, and seven hundred and fifty feet south from this point of discovery upon and along said vein, and three hundred feet in width on either side of the center of said vein. The general course of said vein is north and south, and is called the Edith claim.

Dated this twentieth day of September, 1907.

ALBERT SAWBRIDGE, Locator.

Form 41.

CERTIFICATE OF LOCATION OF LODE CLAIM.

Notice is hereby given, That I, the subscriber, Albert Sawbridge, a citizen of the United States, do hereby claim by right of discovery and location fifteen hundred linear feet upon and along the "Edith" lode or vein, with all its dips and angles, and three hundred feet in width on each side of the center of said vein. I do hereby claim seven hundred and fifty feet upon the said vein running north from the center of the discovery-shaft thereon, and seven hundred and fifty feet along and upon said vein running south from the center of said discovery-shaft.

Said claim is situated in the Lost Cabin mining district, in the county of Sweetwater, in the state of Wyoming. Said discovery-shaft is situated in the center of said claim, and from said discovery-shaft the discovery-shaft house of the "Great Northern" lode mining claim bears north twenty degrees east nine hundred feet distant.

The boundary lines of said claim are as follows: Beginning at the southwest corner of the claim, where I have erected a wooden monument four inches in diameter, four and one half feet long, and set one foot in the ground. Said post is hewn on the side facing the claim, which said southwest corner is four hundred and fifty feet north from a point where the road-bed of the G. T. & R. railroad crosses Sandy Creek; and three hundred feet east from a limestone butte two hundred feet high. Said southwest-corner monument is marked "E. S. W. cor." Running thence from said corner north seven hundred and fifty feet to a substantial wooden monument four inches in diameter and four and one half feet high, and set one foot in the ground, hewn and marked on the side facing the claim "E. W. C. L. P."; continuing same course north seven hundred and fifty feet to the northwest corner of the claim, to a like monument, hewn and marked on the side facing the claim "E. N. W. cor."; thence running east six hundred feet to the northeast corner of the claim, to a like monument, hewn and marked on the side facing the claim "E. N. E. cor."; running thence south seven hundred and fifty feet to a like monument, hewn and marked on the side facing the claim "E. E. C. S. P."; continuing the same course south seven hundred and fifty feet to the southeast corner of the claim, to a like monument, hewn and marked on the side facing the claim "E. S. E. cor."; running thence at right angles west six hundred feet to the said southwest-corner monument, the place of beginning.

Within sixty days after the date of the said discovery and location of said claim, I sunk a discovery-shaft thereon to a depth of ten feet below the lowest rim at the surface, and disclosed therein a well-defined vein of rock in place bearing gold, silver, and other valuable mineral deposits.

The general course of said lode or vein is north and south.

The date of said discovery and location is September 20, A. D. 1907.

The date of this certificate is October 5, 1907.

ALBERT SAWBRIDGE, Locator.

The form used for placer location in Colorado [5] will be sufficient for the same kind of a location in Wyoming. In the latter state the locator must record his notice within ninety days after the discovery.

[5] See ante, Form 17, p. 733.

FORM OF AMENDED LOCATION-NOTICE.

The following form of an amended notice or certificate of location of lode mining claim necessarily should be modified to comply with the state laws or local rules in the state or district where the claim may be situate; but the paragraph next to the last will apply and should be inserted in every amended certificate, notice, or declaratory statement of location.

Form 42.

AMENDED LOCATION-NOTICE.

Lone Share Lode Claim.

Know all men by these presents, That the subscriber, James Hill, does hereby make and file this, his amended and additional certificate of location upon the Lone Share lode mining claim, claiming and locating, by right of original discovery and this amended and additional location-certificate, three hundred feet in width on each side of the center of said lode at the surface, and all lodes, veins, and ledges within the lines of said claim, with all their dips, variations, spurs, and angles, claiming and locating fifteen hundred feet, linear and horizontal measurement, on said lode, said lode running south three degrees six minutes east, fifteen hundred feet from the north center end monument thereof. Said claim is more particularly described in the field-notes hereinafter set forth, to wit:

Beginning at the N. E. cor. No. 1, a post 4 x 4″, 4 ft. long, marked "L. S. No. 1"; thence S. 80° 04′ W. 300 ft. to a post 4 x 4″, 4 ft. long, marked "L. S. N. C. E.," and on same course 300 ft. to cor. No. 2, a post 4 x 4″, and 4 ft. long, marked "L. S. No. 2"; thence S. 3° 06′ E. 1,500 ft. to cor. No. 3, a post 4 x 4″, 4 ft. long, marked "L. S. No. 3 and R. No. 2," it being identical with N. W. cor. No. 2 of the Rex lode.

Thence N. 80° 04′ E. 300 ft. to a post 4 x 4″, 4 ft. long, marked "L. S. S. C. E.," and 300 ft. to cor. No. 4, a post 4 x 4″, 4 ft. long, marked "L. S. No. 4, C. No. 1, and K. 4—3957," it being identical with cor. No. 4 of U. S. survey No. 3957 of the Karm lode, and with cor. No. 1 of the Colorado lode; thence N. 3° 06′ W. 1,500 ft. to cor. No. 1, the place of beginning.

Variation 15° 15′ E.

Said lode mining claim is situated upon Bald Mountain, in the Amigo mining district, in the county of Kern, in the state of California.

This is the same lode and claim of which the original notice or certificate of location was recorded January 20, 1905, in book 40, at page 10, mining records, in the office of the county recorder of said Kern County.

The name of said lode claim is the "Lone Share."

This amended and additional location is made and filed without waiver of any previous right or rights acquired, made, and secured under said former location, for the purpose of correcting any errors or error in said prior location, descriptions, or record, and making more specific the boundaries and descriptions of said claim, and for the purpose of acquiring and holding any overlapping, abandoned, or forfeited claim or vacant ground.

Date of this amended location and of this certificate is this first day of October, A. D. 1907.

JAMES HILL, Locator.

FORM FOR MILL-SITE LOCATION.

Form 43.

LOCATION OF A MILL SITE.

Know all men by these presents, That I, the subscriber, J. Thorkildsen, a citizen of the United States, have upon this fifteenth day of September, A. D. 1907, located, and do claim by right of location for the purpose of using the same as a mill site and for mill-site purposes, a piece of ground six hundred and sixty feet in length by three hundred and thirty feet in width, containing five acres. At each of the four corners and at the center of the west and east side lines of said piece of ground I have erected a wooden post four inches in diameter, four and a half feet long, set one foot in the ground. The boundary lines of said mill site are more particularly described as follows: Beginning at a point five hundred and fifty-five feet east from the junction of Eagle and Trout creeks, which point is the southwest corner of said mill site. Said corner is also two hundred and fifty feet north from a granite butte one hundred feet high. At said corner is set one of the above-mentioned posts. Running thence north three hundred and thirty feet to a wooden post four inches in diameter, four and a half feet long, set one foot in the ground, and marked "I. W. C. S. P."; thence continuing same course three hundred and thirty feet to the northwest corner of said mill site, where one of said monuments is so erected, which is marked "I. N. W. cor."; running thence east three hundred and thirty feet, where a like monument is erected, and marked "I. N. E. cor.," being the northeast corner; running thence south three hundred and thirty feet to a monument four and a half feet long, set one foot in the ground, and marked "I. E. C. S. P."; running thence in the same course south three hundred and thirty feet to a like monument, marked "I. S. E. cor."; running thence west three hundred and thirty feet to the place

of beginning, where the said southwest corner monument, consisting of a wooden post four inches in diameter and four and a half feet long, and marked "I. S. W. cor." From the said northeast corner of said mill site is situated an oak-tree two and a half feet in diameter, bearing east fifty-five feet, blazed, and upon the side facing the said piece of ground marked "I. B. T."

I do hereby call and name said mill site the "Ivanhoe."

I am also the owner of the "Ivanhoe" lode mining claim, which said mining claim is located three hundred feet north of the north end of said mill site. It is my intention to use the said mill site in connection with the said "Ivanhoe" claim.

The date of the location of said mill site is this fifteenth day of September, A. D. 1907. Upon this said day I have posted a duplicate of this notice upon the said monument erected at said southwest corner.

Said mill site is situated and lies in the Bullion mining district, county of ——, state of ——.

J. THORKILDSEN, Locator.

FORM FOR TUNNEL SITE.

Form 44. Location notice or certificate of tunnel site for posting on the ground and for recordation.
Table of measurements to determine surface area of mining claims, mill sites, etc.

Form 44.

LOCATION NOTICE OR CERTIFICATE OF TUNNEL SITE FOR POSTING ON THE GROUND AND FOR RECORDATION.

Know all men by these presents, That I, James Wood, a citizen of the United States, do hereby give notice to all persons that I have the valid right to the possession and occupancy of the "Irving tunnel and tunnel site," located upon this twenty-fourth day of September, A. D. 1907, and I do locate and claim the same for the development and discovery of lodes, veins, and ledges containing valuable minerals, and bearing gold, silver, and other valuable deposits, and for the discovery and location of the same. This tunnel and tunnel site, and the lines thereof, and the ground sought to be acquired by reason of and pursuant to these presents, is all situate and lies in the Elk Horn mining district, in the county of ——, state of ——. The proposed course and direction of the line of this tunnel as projected is due north. The height thereof is seven and a half feet in the clear by four feet wide in the clear. And I claim for and upon the line of said tunnel fifteen hundred feet on each side of the center of the bore of the same, the right to fifteen hundred feet on each side thereof, and all veins and deposits which may be discovered while running and prosecuting the development-work of said tunnel and boring the same.

The course of the line of said tunnel and the projected course of the same from its mouth to the north end thereof and the termination of the same along the line thereof is

three thousand feet, running due north from said mouth of the tunnel. And at intervals of a distance of two hundred and fifty feet apart between the mouth of said tunnel and the said terminus thereof, and at the said terminus, I have set a wooden monument four inches in diameter, four and a half feet long, set one foot in the ground. Each of said posts is marked "Irving T. L. P.," and the post so set at the north end of said center line there is situated from said post so set at the north end terminus of said center line an oak-tree three feet in diameter, blazed upon the side toward the line of said tunnel, and marked "B. T. L.," bearing south eighty-three degrees twenty minutes west fifty-five feet. From the said north-end stake the top of Mount Ætna bears north thirty-five degrees twenty minutes east.

At a point fifteen hundred feet due west from the mouth of said tunnel I have erected a wooden post four inches in diameter, four and a half feet long, and set one foot in the ground. Also from said mouth of the tunnel, at a point fifteen hundred feet due east thereof, I have erected a wooden post four inches in diameter, four and a half feet long, and set one foot in the ground. From said last-mentioned post Mount Avery bears north thirty degrees twenty-five minutes east. And at a point fifteen hundred feet due west from the said north-end stake so set at the end of the line or terminus of the said tunnel I have erected a wooden post four and a half feet long, four inches in diameter, and set one foot in the ground.

And at a point fifteen hundred feet due east from said monument so set at the north-end terminus of the said center line of the tunnel I have erected a wooden post four inches in diameter, four and a half feet long, and set one foot in the ground. From said last-mentioned post Mount Blanco bears north seventy-five degrees forty minutes west. Said four last above-mentioned posts are the corner-monuments of said tunnel site.

The mouth of said tunnel is situated and located on the easterly side of Green's Gulch, and from the mouth of said tunnel a granite boulder fifteen feet high and twenty feet

in diameter, at the junction of Willow and Hard Scrabble creeks, bears north seventy degrees thirty minutes west, one hundred and fifty feet distant. The top of Pinnacle Mountain bears north twenty-five degrees forty minutes east.

Together with all the rights granted to the locator of tunnel sites under section two thousand three hundred and twenty-three of the Revised Statutes of the United States, the statutes of this state, and the local rules and regulations.

Located this twenty-fourth day of September, A. D. 1907.

JAMES WOOD, Locator.

If the locator wishes to locate ground for dumping purposes, he should insert in the above certificate a statement like the following:

I also hereby claim a piece of ground as follows: Beginning at the mouth of said tunnel and running south six hundred and sixty feet, and running east and west from said mouth of said tunnel three hundred and thirty feet on either side of the mouth of said tunnel, which last-mentioned piece of ground I claim for dumping-ground purposes.

TABLE OF MEASUREMENTS TO DETERMINE SURFACE AREA OF MINING CLAIMS, MILL SITES, ETC.

330 x 660 feet	(5 x 10 chains)	equals	5 acres.
660 x 660 feet	(10 x 10 chains)	equals	10 acres.
660 x 1320 feet	(10 x 20 chains)	equals	20 acres.
1320 x 1320 feet	(20 x 20 chains)	equals	40 acres.
2640 x 2640 feet	(40 x 40 chains)	equals	160 acres.

A full-sized lode claim measures 600 x 1500 feet, equals 20.67 acres, or 900,000 square feet.

An acre contains 43,560 square feet.

FORMS FOR FORFEITURE OF LOCATION.

Form 45. Forfeiture notice.
Form 46. Proof of publication of forfeiture notice.

Form 45.

FORFEITURE NOTICE.

Los Angeles, California, January 5, 1908.

To Jean Moor, Your Heirs and Assigns.

You are hereby notified and will take notice that I, the subscriber, George Black, have expended during the year A. D. 1907 one hundred dollars ($100) in labor and improvements upon the Arleen lode mining claim. Said claim is situated and lies in San Francisco Gulch, in the Palomas mining district, in the county of Los Angeles, state of California. The notice of location thereof is of record in book 30, at page 200, of mining locations, in the office of the county recorder of said county of Los Angeles, to which book and page reference is hereby made for a more particular description of said claim. Said expenditure was made for the purpose of holding possessory right and title to said mining claim under the provisions of section twenty-three hundred and twenty-four of the Revised Statutes of the United States and the amendments thereto, providing for the annual labor upon mining claims, said amount being the sum required to hold said mining claim during the period ending the thirty-first day of December, 1907.

If you fail and refuse or fail or refuse within ninety days from the personal service of this notice, if personal service be had, or within ninety days after the publication of this notice, to contribute your proportion of such expenditure as a co-owner, your proportion, being in the sum of thirty-three dollars and thirty-three cents ($33.33), your interest

in said claim will become the property of the subscriber, who is your co-owner, and who has made the expenditure and improvements as above mentioned pursuant to the provisions of the said statute.

GEORGE BLACK.

Form 46.

PROOF OF PUBLICATION OF FORFEITURE NOTICE.

State of California, }
County of Los Angeles, } ss.

—— ——, being first duly sworn, upon his oath says that he is the publisher of the —— ——, a weekly newspaper printed and published at the town of ——, in the said county of Los Angeles, and that the said —— —— is the newspaper published and printed nearest to the said Arleen lode mining claim mentioned in the notice of forfeiture hereto attached, and which is made a part of this affidavit, and that the said notice was printed and published in said paper for fourteen successive weeks. The first publication appeared in the issue of January 6, 1908, and the last in the issue of said publication of April 7, 1908.

Subscribed and sworn to before me this ninth day of April, A. D. 1908.

—— ——, Notary Public.

FORMS OF PROOFS OR AFFIDAVITS OF ANNUAL LABOR.[6]

ALASKA.

Form 47. Proof of annual labor.

ARIZONA.

(See p. 534.)

CALIFORNIA.

Form 48. Affidavit of annual labor.

COLORADO.

(See p. 579.)

IDAHO.

(See p. 587.)

NEVADA.

Form 49. Affidavit of annual labor.

UTAH.

Form 50. Affidavit of annual labor.

WASHINGTON.

Form 51. Proof of annual assessment-work.

WYOMING.

Form 52. Proof of labor.

ALASKA.

Form 47.

PROOF OF ANNUAL LABOR.

Territory of Alaska, ——— ———, } ss.

Todd Wilber, being first duly sworn, deposes and says, upon his oath: That at least one hundred dollars' worth of labor and improvements was made upon the "Dixie" lode

[6] **It is not necessary to make a separate affidavit for each mining claim.** Any number belonging to the same person or corporation may be included in the same affidavit.

mining claim. That affiant has knowledge of the facts herein stated. Said work and improvements consist of running a tunnel upon said claim a distance of twenty feet. Said claim is situated and lies upon the westerly side of Stray Horse Gulch, in the Juneau mining district, in the territory of Alaska. That forty days' work was done and performed in doing said improvements, and the value of said improvements is at least one hundred dollars. That said work was performed between the first day of July and the first day of September, in the year A. D. 1907. That said work and improvements were made at the instance of the affiant, who is the owner of said mining claim, and the whole amount paid for said work was $175.00, and said sum was paid by affiant.

TODD WILBER.

Subscribed and sworn to before me this tenth day of September, 1907.

[Notarial seal] —— ——

Notary Public in and for the —— ——, Territory of Alaska.

ARIZONA.

Statutory form of affidavits or proofs found in the statutes of that territory, ante, p. 534.

CALIFORNIA.

Form 48.

AFFIDAVIT OF ANNUAL LABOR.

State of California, } ss.
County of ——, }

Thomas Goodfellow, being first duly sworn, upon his oath deposes and says: That between the first day of January, A. D. 1907, and the thirty-first day of December of said year, there was done upon and performed upon (or for) the "Ormston" lode mining claim, not less than one hun-

dred dollars' worth of labor and improvements. That said labor and improvements consist of sinking a shaft —— feet, running a drift —— feet, and are of the value of at least one hundred dollars. This labor was performed and improvements made at the expense of the International Gold Mining Company, the owner of said mining claim.

Said claim is situate and lies in the Glengarry mining district, in the county of Mariposa, in the state of California.

THOMAS GOODFELLOW.

Subscribed and sworn to before me this fifteenth day of January, A. D. 1908.

—— ——

Notary Public in and for the County of ——, State of California.

COLORADO.

Statutory form of affidavits or proofs found in the statutes of that state, ante, p. 579.

IDAHO.

Statutory form of affidavits or proofs found in the statutes of that state, ante, p. 587.

NEVADA.

Form 49.

AFFIDAVIT OF ANNUAL LABOR.

State of Nevada, }
County of Elko, } ss.

Dan Freeman, being first duly sworn, deposes and says: That between the first day of September and the last day of October, 1907, he performed upon the "Happy Thought" lode mining claim work and improvements of the value of one hundred dollars; that the character of such labor and improvements consists of running a tunnel a distance of fifteen feet. That said work and improvement was done for the year ending December 31, 1907. That affiant is the owner of said claim, and said work was done at the expense of affiant.

The said claim is situated and lies in the Ely mining district, in the county of Elko, in the state of Nevada.

The said work was completed upon the thirtieth day of October, 1907.

DAN FREEMAN.

Subscribed and sworn to before me this twentieth day of November, 1907.

[Notarial seal] E. C. SMITH, Notary Public.

UTAH.

Form 50.

AFFIDAVIT OF ANNUAL LABOR.

State of Utah, }
County of Uinta, } ss.

Martin J. Ruggles, being first duly sworn, upon his oath deposes and says: That during the months of August and September, 1907, he performed one hundred dollars' worth of work, labor, and improvement upon the "Rainbow" lode mining claim. Said claim is situated and lies in the Monarch

mining district, in the county of Uinta, in the state of Utah. That he worked during said period thirty days upon said claim, and completed the work thereon upon the thirtieth day of September of said year.

That said work and improvement consists of a tunnel run upon said claim, and the value of said improvement is fully one hundred dollars.

That in doing said work he removed one hundred and sixty cubic feet of earth and rock.

That said work and improvement was done and made at the instance and expense of the affiant, who is the owner of said claim.

MARTIN J. RUGGLES.

Subscribed and sworn to before me this twentieth day of October, 1907.

[Notarial seal] HARRY K. HEATHERINGTON,
Notary Public in and for the County of Uinta and State of Utah.

WASHINGTON.

Form 51.

PROOF OF ANNUAL ASSESSMENT-WORK.

State of Washington, } ss.
County of Whatcom, }

Blaine Taylor, being first duly sworn, deposes and says, That during the months of August and September, 1907, he performed, in labor and improvements, upon the "Full Moon" lode mining claim, one hundred dollars' worth of work in improvements; that said work and improvements consisted in running a tunnel twenty feet on said claim; that said work was completed upon the thirtieth day of September, 1907; that he did said work and improvements for the purpose of complying with the law and holding said claim during said year.

BLAINE TAYLOR.

Subscribed and sworn to before me this fifteenth day of October, 1907.

[Notarial seal] —— ——

Notary Public in and for the County of Whatcom, State of Washington.

WYOMING.

Form 52.

PROOF OF LABOR.

State of Wyoming, }
County of Big Horn, } ss.

James Wagner, being first duly sworn, deposes and says, That during the year 1907 there was done and performed upon the Yellow Jacket mining claim at least one hundred dollars' worth of work; that said work was completed upon the thirtieth day of October of said year. Said work was done by the subscriber, who is the owner of said claim, and for the purpose of complying with the law in reference to performing annual assessment-work.

JAMES WAGNER.

Subscribed and sworn to before me this fifteenth day of November, 19—.

[Notarial seal] C. JOHNSON,

Notary Public for the County of Big Horn, State of Wyoming.

FORM OF OPTION.

Form 53.

OPTION WITH PRIVILEGE OF WORKING, ETC.

State of ——, } ss.
County of ——, }

This contract and agreement, made and entered into this —— day of ——, A. D. 19—, by and between the Silver Lakes Mining and Milling Company, a corporation created, organized, and existing under and by virtue of the laws of the state of ——, having its principal office in the city and county of ——, in the said state, and designated herein as the party of the first part, and Sumner Smith, of the city of ——, in the county of ——, in the state of ——, and designated herein as the party of the second part,

Witnesseth, That whereas the said party of the first part is the owner of the following-described lode mining claim, to wit, the "Juanita" lode mining claim, situated and lying in the Amalie mining district, in the county of ——, in the state of ——, the location-notice of said mining claim being recorded in book ——, at page ——, of mining records, in the office of the county recorder of said last-mentioned county of ——, in said last-mentioned state, to which book, page, and records reference is hereby made for a more particular description of said mining claim;

And whereas the said party of the first part wishes to sell, transfer, and convey to the said party of the second part the said hereinabove-described property;—

Now, therefore, The said party of the first part does hereby agree to sell, transfer, and convey by a good and sufficient deed, to the said party of the second part, the whole and all of the hereinabove-described property; and all the right, title, estate, and interest which the said party of the first part has in and to the same, including all veins and the right to follow the same upon their dip, and all improve-

ments situated upon said premises or in any wise appertaining thereto, for the sum of twenty-five thousand dollars, lawful money of the United States, and other considerations mentioned herein, and under the terms, conditions, covenants, and agreements hereinafter mentioned, to wit: Of the said sum of money constituting the purchase price of said property, five hundred dollars having been this day paid to the said party of the first part, the receipt whereof is hereby acknowledged, the balance of said sum of money, to wit, twenty-four thousand five hundred dollars, shall be deposited in the —— Bank, in the city of ——, in the state of ——, on or before the —— day of ——, 19—.

The said party of the second part, his employees and representatives, shall have the privilege, and it is hereby granted to them, of entering upon the said hereinabove-described premises, and each and every part thereof, and shall also have the privilege of working, operating, and developing the same, and of extracting the ores found therein, as well as of using and operating the hoisting plant and the tools and implements thereon, during the life of this contract.

The said party of the second part shall bear wholly and solely the expense necessarily incurred in working, operating, and developing said property.

The said party of the second part shall begin work upon said premises on or before the expiration of the thirty days from and after the date of the execution of this instrument, and shall, during the life of this agreement, do and perform, or cause to be done and performed, in the development, operation, and working of said property, not fewer than three hundred shifts of work each and every month.

Any and all work done and performed during the life of this contract upon said premises shall be done in a workmanlike manner, miner-fashion, and with a view to the proper preservation of the property.

Upon the said party of the second part paying the said sum of twenty-four thousand five hundred dollars, or depositing the same in said above-mentioned bank, on or before the said last-mentioned date, said party of the first part shall forthwith execute and acknowledge, and deliver to

the said bank, a good and sufficient deed conveying and transferring said premises to the said party of the second part, pursuant to the terms of this agreement. Immediately after the deposit of the said deed in said bank, the said bank is hereby authorized and instructed and empowered to pay to said party of the first part, or to deposit in said bank, to the credit of said party of the first part, the said sum of twenty-four thousand five hundred dollars, and to deliver to the said party of the second part said deed.

During the life of this contract the said party of the second part shall not do any act or thing which would cause mechanics' or other liens to be placed against said premises or any part thereof.

The said party of the first part shall have the privilege, at all times during the life of this contract, of causing to be posted and of keeping posted in a conspicuous place or places on said premises a notice in writing, or a printed notice, reading to the effect that the work and development being done upon said premises, or any improvements being placed thereon, is being done wholly and solely at the expense of the said party of the second part, and stating that the said parties of the first part will not be responsible for any indebtedness for labor, materials, or otherwise, or at all, created by said party of the second part in connection with the work and operation of said property during the existence of this agreement.

The said party of the first part covenants and agrees with the said party of the second part that the said party of the first part is the owner of the hereinabove-described mining property, and has a good and clear title thereto, and further covenants and agrees to convey to the said party of the second part the said property free and clear of all encumbrances.

It is further agreed, for and in consideration of the covenants and conditions herein named to be kept and performed by both parties hereto, that the terms and conditions hereof are binding upon the heirs, administrators, and assigns of the parties hereto.

The said sum of five hundred dollars so paid as aforesaid by the said party of the second part to the said party of the first part is a part of the consideration for which this option is executed.

Time being of the essence of this contract, should the said party of the second part fail, neglect, or refuse to carry out any of the terms and conditions hereinabove stated, or to make said deferred payment on or before said last-mentioned date, this contract shall become null and void and of no further force or effect, and the said sum of five hundred dollars so paid to said party of the first part shall be retained by said party of the first part as liquidated damages for the use and occupancy of said premises, and as the consideration for which this instrument is executed, and the said party of the second part shall forthwith deliver up to the said party of the first part the peaceful possession of said premises and every part thereof.

In witness whereof, The parties hereto have hereunto set their hands and seals in duplicate the day and year first above written.

SILVER LAKES MINING AND MILLING COMPANY.
By —— ——, [Seal]
President.

[Corporate seal] By —— ——, [Seal]
Secretary.

SUMNER SMITH. [Seal]

FORM OF LEASE.

Form 54.

FORM OF LEASE FOR LODE MINING CLAIM.

This lease and agreement, made and entered into upon this —— day of ——, A. D. 19—, by and between Jean Martin, of the county of ——, in the state of ——, designated herein as the lessor, and the Golden Wedge Mining Company, a corporation created and existing under and by virtue of the laws of the state of ——, and designated herein as the lessee:

Witnesseth, That whereas the said lessor is the owner and possessor of the "Marmion" lode mining claim, situate, lying, and being in the Crystal Cañon mining district, in the county of ——, in the state of ——, United States patent No. ——, said United States patent being duly recorded in book ——, at page ——, in the records in the office of the county recorder of said last-mentioned county;

Now, therefore, for and in consideration of the sum of one dollar in hand paid to the said lessor by the said lessee, the receipt whereof is hereby acknowledged, and the further consideration of the covenants, agreements, and considerations hereinafter mentioned, the said lessor does by these presents lease and demise unto the said lessee, for the period and term of one year from and after the date hereinabove first mentioned, the hereinabove-described mining property, together with all the rights and appurtenances thereunto belonging or in any wise appertaining.

The said lessee shall have the privilege, and it is hereby granted to it, its agents, employees, and representatives, to enter upon the said above-described premises and every part thereof, and to work and operate the same, extract, reduce, ship, and sell, or to reduce, treat, ship, and sell, the ores and values contained in said mine, and which may be now situate upon the surface thereof.

The said lessee, during the life of this lease, shall work and employ not fewer than —— men, Sundays and holidays excepted, in the operation and development of said premises, and in extracting, shipping, selling, and treating the ores therein contained and situate thereon.

The said lessee shall do and perform with each of said men not fewer than fifteen shifts of work each and every month during the life of this lease.

Any and all work done in and upon said premises during the life of this lease shall be done in a first-class manner, miner-fashion, and in such manner as may be necessary to the proper preservation of said property and compatible with economical mining.

At all times and at all places in said mine, when and where it may be necessary, the said lessee shall keep the same well timbered, to make the underground workings safe and to prevent the same from caving.

All of said workings shall at all times and all places be kept clear of loose rock and earth.

Any and all tunnels, shafts, drifts, or winzes and other workings shall be not less than six and one half by three and one half feet in the clear.

At all times during the life of this contract the said lessor, his agents or employees, may enter upon and into said property, and all parts thereof, for the purpose of inspection, with a view to ascertaining whether or not the terms and conditions of this agreement are being fulfilled and carried out.

From and out of the values obtained from the ores so extracted, and which may be found in or upon said premises, and reduced, treated, sold, or shipped, the said lessee shall pay to the said lessor twenty per cent of the gross proceeds thereof. A duplicate of all mill or smelter returns shall be furnished by the mill-owner, or by the owner of the smelter, to the said lessor; the said lessee shall keep books of account, showing the amount of ore shipped, sold, or treated, and the amount of money received from the sale of the ores or the values extracted therefrom, and said books of accounts shall be open at all reasonable times to the said lessor and his representatives.

Said lessee shall not assign this lease, or any interest therein, or any part thereof, and shall not sublet the said premises, or any portion of the same, without the consent in writing first obtained from the said lessor; and shall not permit any person or persons to have possession of said premises, or any portion thereof, save and except those rightfully entitled thereto, pursuant to the conditions set forth in this instrument.

At the termination of this lease one year from the date of the execution of this instrument, the said lessee shall deliver and return to said lessor the complete, full, and peaceful possession of said above-described premises, and every part thereof, in good condition, and the workings in and upon said premises, ready for work and operation, without further notice or demand.

Upon any violation of the conditions, covenants, and agreements hereinabove set forth, this lease, at the option of the said lessor, shall expire, and said premises, and all improvements thereon, and the appurtenances thereto appertaining, shall be forfeited to the lessor, and his agents, employees, and representatives may, after demanding possession in writing, enter upon said premises, and every part thereof, and dispossess the said lessee, his employees, agents, and representatives, with or without process of law, and without force.

In witness whereof, The said lessor and the said lessee have hereunto signed their names, and set their hands and seals the day and year in this lease hereinabove first written.

JEAN MARTIN, [Seal]
Lessor.

GOLDEN WEDGE MINING COMPANY, [Seal]
Lessee.

[Corporate seal] By ——, [Seal]
President.

Attest: ——, [Seal]
Secretary.[7]

[7] **If it should be deemed desirable or necessary to acknowledge this lease,** acknowledgment should be made in the form required by the statutes of the state in which the mine is situated.

FORM OF QUITCLAIM DEED.

Form 55.

QUITCLAIM DEED.

This indenture, made the —— day of ——, in the year of our Lord one thousand nine hundred and ——, between J. A. Morison, of the city of ——, in the county of ——, in the state of ——, the party of the first part, and William Clark, of the city of ——, in the county of ——, in the state aforesaid, the party of the second part.

Witnesseth: That the said party of the first part, for and in consideration of the sum of —— dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land, to wit:

The whole and all of, and all the right, title, estate, and interest which the said party of the first part has in and to, the "Virginia" lode mining claim. Said claim is situated and lies on the westerly side of San Jacinto Mountain, in the Red River mining district, in the county of ——, in the state of ——, the location-notice thereof is recorded in book 25, at page 352, of mining locations, in the records in the office of the county recorder of said last-mentioned county, to which book, pages, and records reference is hereby made for a more particular and accurate description of said mining claim;

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, —— property,

possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises, and every part and parcel thereof, with the appurtenances, and all veins, lodes, and ledges within the surface boundary lines of said mining claim, with all their dips, spurs, and angles, with the right to follow the same upon their dip, and any and all minerals therein contained, and all improvements situate thereon;

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

J. A. MORRISON. [Seal] [8]

[8] **This deed must be acknowledged** in the form prescribed by and in conformity with the requirements of the laws of the state in which the mining claim may be situated.

What is ordinarily called a mining deed is almost similar in form to a quitclaim deed, except that most mining deeds contain certain operative words of warranty, containing such words as "grant," "bargain and sell," in addition to the usual words in a quitclaim deed of remise and release.

FORM FOR GRUB-STAKING.

Form 56. Prospecting or grub-stake contract.
Form 57. Notice of non-liability for labor or materials furnished.

Form 56.

PROSPECTING OR GRUB-STAKE CONTRACT.

State of ——, } ss.
County of ——. }

This contract and agreement, made and entered into this —— day of ——, A. D. 1908, by and between E. M. Ruggles, of the city and county of ——, of the state of ——, and designated herein as the party of the first part, and Percy Baker, of the city of ——, in the county of ——, in the state of ——, and designated herein as the party of the second part,

Witnesseth: That for and in consideration of the sum of five hundred dollars, lawful money of the United States, this day paid to the party of the second part by the party of the first part, the receipt whereof is hereby acknowledged, and the further considerations, covenants, and agreements hereinafter mentioned, said party of the second part hereby agrees with the party of the first part that he will prospect for lodes and other deposits of mineral of different kinds, and for both lode and placer, in the counties of ——, in the states of —— and ——, and further agrees with the said party of the first part to locate any and all discoveries of mineral which he may make during the life of this contract, and which may be deemed worthy of being located and worthy of being developed, and will at all times during the life of this contract use his best efforts to find either lode or placer deposits of minerals in the states and counties aforesaid, and will do everything in his power to discover and locate valuable mineral claims, and that of any and all

lodes or deposits of minerals so discovered, pursuant to and during the life of this contract, an undivided half interest therein shall be the property of the party of the first part, and an undivided half interest therein shall be the property of the party of the second part, and in locating and in making the location upon any discovery made pursuant to the terms and conditions of this contract, and during the life of the same, any claim or claims so located shall be located in the joint names of the first and second parties, and in all cases both the name of the party of the first part and the name of the party of the second part shall be placed upon the notice or certificates and the notice and certificates of location, both upon such notices as it may be necessary to post upon the ground and to have recorded, or upon any location, stake, or monument, if a monument or stake is used, in lieu of a notice posted upon a monument or stake.

The said party of the second part further agrees to record in the proper offices the location-notices or certificates of location in compliance with the requirements of the statute of the United States and state statute and the local rules of the district in which the claim or claims may be situated, and to pay the expense of so recording out of the funds furnished to him by the said party of the first part, and otherwise to do and perform any and all necessary acts of location in the way of doing work, monumenting claims, and otherwise complying with the aforesaid statutes and local rules.

This contract shall continue and be in force for six months from and after the date hereinbefore first mentioned.

From and out of said sum of money so furnished to the said party of the second part by the said party of the first part hereinbefore mentioned, the said second party agrees to pay his own expenses while so prospecting and carrying out the terms and conditions of this contract, and out of said money will buy and furnish himself with the necessary provisions and tools, and, if necessary, a pack animal or animals, the same to be used in carrying out the conditions of this contract. It is hereby understood and agreed by and between the parties to this contract that the same is

what is ordinarily known among miners as a "grub-stake" contract, and the said sum of money furnished as hereinbefore stated to said second party by the said first party is so furnished to the second party in lieu of provisions and tools and other necessary things to be used in prospecting.

It is expressly understood and agreed that the said party of the second part will not prospect for and locate claims for any other person or persons or corporation during the life of this contract.

In witness whereof, The said party of the first part and the said party of the second part have hereunto set their hands and seals in duplicate the day and year first above written.

E. M. Ruggles. [Seal]
Percy Baker. [Seal]

Form 57.

NOTICE OF NON-LIABILITY FOR LABOR OR MATERIALS FURNISHED.

Notice is hereby given to all persons, That the subscriber, Old Cowboy Mining Company, a corporation created, organized, and existing under and by virtue of the laws of the state of California, is the owner of the hereinafter-described mining property and all the improvements thereon.

That said hereinafter-described property is now in the possession of and is being worked and operated by F. E. Monteverde, Jr., or his assigns, pursuant to a contract and option to purchase (or lease) made and executed by the subscriber in favor of said Monteverde, dated January 10, A. D. 1908, said contract to be in force up to and including the first day of February, A. D. 1910.

That the subscriber will not be responsible for, and will not pay for, any work, labor, or services performed upon or rendered in connection with, or supplies or materials furnished for, said property between this date and said first day of February, 1910.

The subscriber is not working or operating said property, or any part thereof, and does not intend to work or operate

said property, or any part thereof, or purchase any supplies or materials therefor, during the life of said contract with said Monteverde.

The said mining property is as follows, to wit: Old Cowboy Mining Claim, situated and lying and being in Amalie mining district, in the county of Kern, in the state of California, the location-notice of said mining claim being duly recorded in book 22, at page 304, of mining records in the office of the county recorder of said Kern County, to which book, page, and records reference is hereby made for a more particular description of said mining claim.

In witness whereof, The said corporation has hereunto caused its name to be signed and its corporate seal affixed by and through its president and secretary this tenth day of January, A. D. 1908.

OLD COWBOY MINING COMPANY,
[Corporate seal] By C. W. BRYSON, President.
Attest: H. W. ALDEN, Secretary.

To protect the owner from liability, this notice must be posted either in a conspicuous place upon the mining property or else recorded in the office of the county recorder of the county wherein the claim may be situated. We think, however, it advisable, as safer and more equitable, both to post and record the notice; if it be posted, it gives the laborer and the material-man a much better opportunity of receiving actual notice, and if it be recorded, it is an additional protection to the owner, for the reason that the posted notice is liable to be torn down or destroyed. The above form conforms to the requirements of the provisions of the Code of Civil Procedure of the state of California.[10]

In preparing notices of this kind in other states, care, of course, must be taken to have them comply with the statutes of the state wherein the property may be situated.

[10] **Kerr's Cyc. Code Civ. Proc.,** § 1192, as amended March 18, 1907, Stats. and Amdts. 1907, p. 576; **Kerr's Stats. and Amdts.** 1906-07, p. 481.

FORMS IN ADVERSE CLAIMS.

Form 58. Adverse claim.
Form 59. Complaint in support of adverse.
Form 60. Answer.

Form 58.

ADVERSE CLAIM.

United States Land-Office at Gunnison, Colorado.

In the Matter of the Application of Jacques Martin and Edmund Vallette for a United States Patent for the Seraphim Lode Mining Claim, situate in Marshall Pass Mining District, in the County of Gunnison, State of Colorado.

To the Register and Receiver of the United States Land-Office at Gunnison, Colorado, and to each of the above-named Claimants.

Whereas, Jacques Martin and Edmund Vallette did on the twentieth day of December, 1907, file in the district land-office of the United States at Gunnison, Colorado, a certain plat of a survey of a certain pretended lode mining claim, together with their application for a United States patent for said pretended lode mining claim, designating the same, in said plat and in their application, the Seraphim lode mining claim, situate in the Marshall Pass mining district, in the county of Gunnison, state of Colorado; said survey and plat is designated as United States mineral survey No. 5671 and claiming surface-ground fifteen hundred feet long and three hundred feet wide;

And whereas said Jacques Martin and Edmund Vallette did give and publish notice that they were applying for a United States patent for the aforesaid pretended lode mining claim, to wit, the Seraphim mining claim, which notice is in substance as follows, to wit:

[Here insert copy of the notice of application for patent. A convenient and desirable way is to paste in copy of the notice as published in the newspaper.]

And whereas the first publication of said application appeared in the Gunnison Gazette, a weekly newspaper published in the city of Gunnison, in the county of Gunnison, in the state of Colorado, on the twenty-second day of December, 1907;

Now, therefore, I, the subscriber, Hubert Lawrence, on behalf of myself and my said co-owner, James Cummings, each of whom is a citizen of the United States of America, over and above the age of twenty-one years, and residing at said city of Gunnison, in the county and state last mentioned, hereby and herewith file and enter my adverse claim against the granting and issuance of a patent to the said Jacques Martin and Edmund Vallette, or to either of them, for their claim upon the premises described in their aforesaid application as the Seraphim lode mining claim, or for any part of said premises, or for the pretended Seraphim lode mining claim, or any portion thereof, as designated and described upon said plat, and more particularly set forth in the field-notes constituting a part of their application for patent.

The reasons for contestant objecting to the issuance or the granting of such patent for said above-mentioned Seraphim lode mining claim, or any portion thereof, are, in part, as follows, to wit:

Because neither the surface-ground, nor any vein or lode within the exterior boundary lines of said pretended Seraphim lode mining claim, as shown upon their said plat, and described in their said field-notes, and set forth in their notice of application for patent, belongs to or is the property of said applicants for patent, nor does any part of the premises, so claimed as the said pretended Seraphim lode mining claim, belong to the said applicants, or to either of them, or at all. But, on the contrary, that a greater portion of the premises so claimed by said applicants, and so described in their said field-notes and notice of application,

and in their said application for patent, is the property of and belongs to this contestant and his said co-owner, James Cummings; and that this contestant and adverse claimant and his said co-owner, James Cummings, are entitled to the exclusive and peaceful possession of the greater portion of the premises so claimed as the said pretended Seraphim lode mining claim.

That, as will more particularly appear by an abstract of title filed herewith, and made a part of this adverse claim, this contestant and his said co-owner, James Cummings, are the owners of the Minnehaha lode mining claim, the said lode consists of quartz-rock in place, carrying silver, gold, and other valuable deposits, said claim being situate and lying in the above aforesaid mining district.

This contestant and his said co-owner, by right of priority of discovery and location, are entitled to the occupation and possession of all that portion of the pretended Seraphim lode mining claim, described upon the plat and survey made by S. J. Spray, United States deputy mineral surveyor, which said plat is filed herewith and made a part of this adverse claim, and as appears therefrom showing the conflict and showing the nature and extent of the conflict or interference of the surface-ground between the said pretended Seraphim lode mining claim and the said Minnehaha lode mining claim; said plat is marked "Exhibit A." As shown by said last-mentioned plat, the portion of ground in conflict between said two claims cover an area of 6.70 acres, and upon said last-mentioned plat is colored blue, and is more particularly described as follows: Beginning at cor. No. 1 of the Minnehaha lode, whence Mount Ætna bears N. 11° 30′ W., and cor. No. 1 of survey No. 2430, Los Angeles lode, bears N. 69° E. 60 ft., and running thence S. 40° 15′ E. 24 ft., thence S. 44° 45′ W. 100 ft., thence S. 45° 15′ E. 1170 ft. to the easterly side line of the Minnehaha lode; thence S. 40° 15′ E. 300 ft. to cor. No. 2 of said Minnehaha lode; thence S. 51° 45′ W. 300 ft. to cor. No. 3 of said Minnehaha lode; thence N. 35° 15′ W. 1082 ft. to the westerly side line of said Minnehaha lode; thence N. 35° W. 496 ft.

to the end line of said Minnehaha lode; thence N. 51° 45′ E. 172 ft. to the point of beginning. True courses. Said piece of ground so claimed, and for which the said applicants for patent are claiming to be the owners of, in truth and in fact belongs to and is the property of your protestant and his said co-owner, and is a part and portion of the said Minnehaha lode mining claim.

That at the time this contestant and his said co-owner, to wit, upon the eighth day of January, 1904, this adverse claimant and his said co-owner, each of them being at that time citizens of the United States, entered upon the premises now claimed by them as the said Minnehaha lode mining claim, and at said time, upon said date, and at the time that this contestant and the said co-owner located the same, the said premises were open and unoccupied lands of the United States, and a part of the public domain, and were wholly vacant and unoccupied, and were not claimed by any person or persons, and did not belong to any person or persons, and upon said last-mentioned date, and while the same was a part of the public domain of the United States, and unoccupied mineral lands belonging to the United States, this contestant and his said co-owner, James Cummings, discovered and located a vein of quartz-rock in place, carrying gold, silver, and other valuable deposits, and upon said day located the same, and did then and there place and erect at the point of discovery a notice, which notice set forth the name of the lode, to wit, the Minnehaha; the names of the locators, to wit, this contestant and his said co-locator, James Cummings; the date of the location and the date of the discovery, to wit, the —— —— ——; and marked the boundary lines of said Minnehaha claim by placing at each of the four corners of the same, and at the center of each side line, substantial wooden posts, each of said posts were hewn on the side of the posts toward the claim and firmly sunk into the ground, and thereafter, and within sixty days from the said date of the discovery, your contestant and his said co-owner, James Cummings, sunk a discovery-shaft upon the vein so discovered to a depth of fully ten feet from

the lowest part of the rim at the surface and disclosed and opened up in said shaft, a well-defined crevice and vein of rock in place, carrying gold, silver, and other metals, and within three months from the aforesaid date of their discovery of the said Minnehaha lode, and upon the twenty-fifth day of February, 1904, your protestant and his said co-owner caused to be made and filed in the office of the county clerk and recorder of said county a location-certificate, said location-certificate contained the names of the locators, to wit, the name of your protestant and the name of his said co-owner, James Cummings; the name of the claim, to wit, Minnehaha lode mining claim; the date of the location; the date of the discovery; the number of linear feet in length claimed upon said vein from each side of the center of the said discovery-shaft; and the number of feet claimed on each side of the center of the vein; the general course of the lode or vein; all of which will more fully appear by the certified copy of said certificate of location, duly certified to by the county clerk and recorder of said county, and filed herewith and marked "Exhibit B."

And thereafter, during each of the years of 1905, 1906, and 1907, this contestant and his said co-owner performed upon said claim work, labor, and improvements of the value of more than one hundred dollars ($100.00) per year, as will appear from said abstract; that they filed an affidavit of the performance of such labor and improvements after the completion of said work, and within the year within which it was so performed, in the office of the county clerk and recorder of said county. And in every respect, in making the location of said claim, in marking the boundaries, and in doing the location-work and in the recordation of the notice or certificate of location, and in performing the annual labor and in making and recording proof thereof, your contestant and his said co-owner complied with each and all of the local rules and regulations of the miners in said district, the laws of the state of Colorado, and the laws of the United States.

That this protestant and adverse claimant and his said co-

owner file this adverse claim as locators and as owners of said Minnehaha lode mining claim.

That contestant and his said co-owner are entitled to the said Minnehaha lode, and any and all lodes embraced within the exterior boundary lines of said Minnehaha lode mining claim.

Wherefore, this contestant, for himself and his aforesaid co-owner, James Cummings, enters and files this his protest and adverse claim against the granting and issue of a patent from the United States to the said Jacques Martin and Edmund Vallette, or either of them, for the said so-called pretended Seraphim lode mining claim, or any part thereof.

Witness the hand of the adverse claimant this twenty-second day of January, A. D. 1908.

HUBERT LAWRENCE.

State of Colorado, }
County of Gunnison, } ss.

On this twenty-second day of January, 1908, before me, the subscriber, a notary public, personally appeared Hubert Lawrence, who, being first duly sworn, upon his oath deposes and says: That he is one of the adverse claimants named in the foregoing protest and adverse claim made by himself, and by himself above subscribed; that he has read the same and knows the contents thereof, and that the same is true in substance and in fact; that said adverse claim is made in good faith and to protect the better and prior title of himself and his co-owner, James Cummings.

HUBERT LAWRENCE.

Subscribed and sworn to before me this twenty-second day of January, 1908. My commission as notary public expires June 20, 1910.

B. L. OLIVER, Notary Public.

Form 59.

COMPLAINT IN SUPPORT OF ADVERSE.

State of Colorado,
County of Gunnison. } ss.

In the District Court of said County.

Hubert Lawrence and James Cummings, Plaintiffs,
v.
Jacques Martin and Edmund Vallette, Defendants.
} Complaint.

The plaintiffs allege:

I.

That on the first day of December, A. D. 1907, and ever since hitherto, they were and are the owners and in the actual occupation of the Minnehaha lode mining claim, fifteen hundred feet in length by three hundred feet in width, situate in Marshall Pass mining district, county and state aforesaid.

II.

That they claim the right to occupy and possess said mining premises by virtue of full compliance with the local laws and rules of miners in said mining district, the laws of the state of Colorado, and of the United States, by discovery and location and by actual prior possession on the public domain of the United States.

III.

That at all times during the month of January, A. D. 1904, the plaintiffs herein, each being then and there a citizen of the United States, over the age of twenty-one years, entered upon the premises herein described as the Minnehaha lode mining claim, which said premises were then and there a part and portion of the vacant, unoccupied, and unappropriated public domain and mineral lands of the United States, and that they then and there began to explore the said premises for veins, lodes, and mineral deposits, and

afterwards, and before locating said claim, to wit, on the eighth day of January, A. D. 1904, they discovered and disclosed on said premises, by means of a shaft sunk thereon by them to the depth of more than ten feet from the lowest part of the rim thereof, at the surface, a vein, lode, or deposit of mineral rock in place, and a well-defined crevice carrying and containing gold, silver, iron, lead, and other minerals.

IV.

That after such discovery of mineral as aforesaid, and on the day of said discovery, the plaintiffs posted at the point of discovery a plain sign or notice containing the name of the lode, to wit, the Minnehaha lode; the names of the locators, to wit, Hubert Lawrence and James Cummings; the date of the discovery, to wit, the eighth day of January, A. D. 1904; and the general course of the lode as claimed.

V.

That after the aforesaid discovery and location and the posting of the aforesaid notice, and on, to wit, the first day of February, A. D. 1904, the plaintiffs caused the surface boundaries of their said mining claim to be marked and designated by six substantial posts hewn on the sides towards the claim and sunk firmly in the ground, to wit, one at each corner of the claim and one at the center of each side line, and each post so marked as to indicate the part of the claim whereat it was erected.

VI.

That afterward, and on the eighth day of February, A. D. 1904, the plaintiffs herein, discoverers and locators as aforesaid, caused to be filed for record in the office of the clerk and recorder of Gunnison County, Colorado, their certificate of location of said Minnehaha lode mining claim, which certificate contained the name of the lode; the names of the locators, to wit, the names of the plaintiffs herein; the date of discovery and location, to wit, the eighth day of January, A. D. 1904; the number of feet in length claimed on each side of the discovery-shaft, the general course of the lode as claimed, and such a description as would identify the

claim with reasonable certainty, said certificate being in words and figures as follows, to wit:

Know all men by these presents: That we, Hubert Lawrence and James Cummings, the undersigned, have, this eighth day of January, A. D. 1904, located, and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress approved May 10, 1872, and all subsequent acts, and the statutes of the state of Colorado, and with local customs, laws, and regulations, fifteen hundred linear feet, horizontal measurement, on the Minnehaha lode, vein, ledge, or deposit, along the vein thereof, with all its dips, angles, and variations, as allowed by law, together with one hundred and fifty feet on each side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges, or deposits and surface-ground within the lines of said claim, 675 feet running S. 40° 15′ E. from center of discovery-shaft, and 875 feet running N. 40° 15′ W. from center of discovery-shaft, said discovery-shaft being situate upon said lode, vein, ledge, or mineral deposit, and within the lines of said claim, in Marshall Pass mining district, county of Gunnison, and state of Colorado, described by metes and bounds as follows, to wit:

Beginning at cor. No. 1, whence Mount Ætna bears N. 11° 30′ W., Mount Shavano bears N. 19° 15′ E., and cor. No. 1 of survey No. 2430, Los Angeles lode, bears N. 69° E. 60 ft.; thence S. 40° 15′ E. 750 ft., N. E. side center post; same course 1,500 ft. to cor. No. 2, whence Mount Ouray bears S. 31° E. White Mountain bears N. 68° 30′ E. Thence S. 57° 45′ W. 300 ft. to cor. No. 3; thence N. 40° 15′ W. 750 ft., S. W. side center post, same course 1,500 ft. to cor. No. 4; thence N. 57° 45′ E. 300 ft. to cor. No. 1, the place of beginning. True courses.

Said lode was discovered and located on the eighth day of January, A. D. 1904.

Hubert Lawrence (¾ interest),
James Cummings (¼ interest),
Locators.

VII.

Plaintiffs further allege that while they were in the quiet and peaceable possession of the aforesaid Minnehaha lode mining claim, and lawfully entitled thereto, the defendants on, to wit, the tenth day of December, A. D. 1907, wrongfully entered upon a portion of said Minnehaha lode or mining claim, to wit, all that portion thereof which is intersected by the exterior lines of survey No. 5671, known as the Seraphim lode, and described by metes and bounds, to wit: Beginning at cor. No. 1 of the Minnehaha lode, whence Mount Ætna bears N. 11° 30′ W. and cor. No. 1 of survey No. 2430, Los Angeles lode, bears N. 69° E. 60 ft., and running thence S. 40° 15′ E. 24 ft., thence S. 44° 45′ W. 100 ft., thence S. 45° 15′ E. 1,170 ft. to the easterly side line of the Minnehaha lode; thence S. 40° 15′ E. 300 ft. to cor. No. 2 of said Minnehaha lode; thence S. 51° 45′ W. 300 ft. to cor. No. 3 of said Minnehaha lode; thence N. 35° 15′ W. 1,032 ft. to the westerly side line of said Minnehaha lode; thence N. 35° W. 496 ft. to the end line of said Minnehaha lode; thence N. 51° 45′ E. 172 ft. to the point of beginning; containing 6.70 acres; and did then and there wrongfully oust these plaintiffs from the said portion of said Minnehaha lode mining claim, and have ever since wrongfully withheld and still do wrongfully withhold the possession of the same from plaintiffs, to their damage in the sum of ten thousand dollars.

VIII.

That this action is brought in support of an adverse claim filed by these plaintiffs in the United States district land-office at Gunnison City, in Gunnison County, Colorado, on, to wit, the twenty-fifth day of January, A. D. 1908, and less than thirty days before the beginning of this action, against the application of the defendants herein for a United States patent for the premises by them named and called the Seraphim lode, and in which is embraced and included that portion of the Minnehaha lode described by metes and bounds in the last preceding paragraph; that plaintiffs so filed their adverse claim in said land-office, as in this para-

graph mentioned, during the sixty-day period of publication of notice of application for patent for the said alleged Seraphim lode mining claim; that they have necessarily expended for plats, abstracts of title, and reasonable attorney fees, in preparing and making their said adverse claim, the sum of one thousand dollars.

That during the years A. D. 1905, 1906, and 1907, and during each of said years, the plaintiffs have done and performed upon said Minnehaha lode mining claim fully one hundred ($100.00) dollars' worth of work, labor, and improvements, and recorded an affidavit reciting the performance of such labor and improvement in the office of the county clerk and recorder of said Gunnison County.

Wherefore plaintiffs pray for judgment against defendants:

1. For the possession of that portion of the said Minnehaha lode mining claim described in Paragraph VII hereof;

2. For the sum of ten thousand ($10,000.00) dollars damages for the wrongful ouster from and detention of said portion of said Minnehaha claim so described in said Paragraph VII;

3. For the said sum of one thousand ($1,000.00) dollars expended by plaintiffs on account of their said adverse claim.

4. That the plaintiffs are the owners and lawfully entitled to the possession of said portion of said Minnehaha claim so in conflict with said pretended Seraphim claim as described in said Paragraph VII;

5. That the defendants, and each of them, their agents, servants, and employees, during the pendency of this action, be restrained from mining in or extracting any ores from or in any way interfering with the possession of, said portion of said premises, so in conflict as described in said Paragraph VII;

And for such other and further relief as to the court may seem just and proper.

—— ——, Attorney for Plaintiffs.

Form 60.

ANSWER.

State of Colorado,
County of Gunnison, } ss.

In the District Court of said County.

Hubert Lawrence and James Cummings,
Plaintiffs,
v.
Jacques Martin and Edmund Vallette,
Defendants.
} Answer.

Come now the defendants in the above-entitled cause, and, answering the complaint of plaintiffs on file in this action, allege:

I.

Defendants, and each of them, deny each and all and every one of the statements and allegations contained in said complaint, except such as are hereinafter specifically admitted.

II.

Defendants admit that, as alleged in said complaint, they have applied for United States patent for the Seraphim lode mining claim, mentioned in said complaint, and admit that this suit was instituted in support of an adverse claim filed by the said plaintiffs in the district land-office of the United States at the city of Gunnison, in the state of Colorado, and that said action was instituted less than thirty days after the filing of such adverse claim in said land-office, and that said adverse claim was filed in this office within the sixty-day period of publication of the notice of application for patent for said Seraphim lode mining claim.

III.

Defendants, and each of them, deny that the plantiffs, or either of them, are the owners of or entitled to the possession of that portion of the said Seraphim lode as shown by said

complaint to be in conflict with the Minnehaha lode mining claim as described and specifically set forth in said complaint, and deny that plaintiffs, or either of them, are the owners of, or entitled to the possession of, or have any interest in, that portion of the said Seraphim lode mining claim so alleged to be in conflict with the above-mentioned Minnehaha lode mining claim, or that the said defendants, or either of them, are entitled to the possession of, or are the owners of any portion of, the said Seraphim lode mining claim, or at all.

IV.

Defendants deny that the plaintiffs, or either of them, are entitled to the possession of, or are the owners of that portion of, the said Minnehaha lode mining claim so alleged to be in conflict with the said Seraphim lode mining claim, or at all; and deny that the plantiffs, or either of them, have complied with the local laws and rules of the miners in the said Marshall Pass mining district, or the laws of the state of Colorado, or the laws of the United States, in their attempted and alleged location of the said Minnehaha lode mining claim; and deny that plaintiffs, or either of them, on the eighth day of January, 1904, or at any time, or at all, discovered on their said alleged Minnehaha lode mining claim, a lode of mineral or quartz-rock in place or well-defined crevice, containing gold, silver, lead, or other metals, or at all; and deny that said plaintiffs, or either of them, performed the acts of location of said Minnehaha lode mining claim as mentioned in Paragraphs IV, V, and VI of said complaint, or that they did or performed any of the acts or things mentioned in said last-mentioned paragraphs, or any of said last three mentioned paragraphs, or at all, in their attempted or alleged location of their said Minnehaha lode mining claim.

V.

And deny that the said plaintiffs, or either of them, have been damaged in the sum of ten thousand ($10,000.00) dollars, or in any sum or sums whatsoever, or at all.

VI.

And defendants deny that the plaintiffs, or either of them, did or performed all work, labor, and improvements, or any work, labor, or improvements, upon said alleged Minnehaha lode mining claim, during the years 1905, 1906, 1907, or in any of said years, or at all. And deny that defendants, or either of them, wrongfully ousted plaintiffs, or either of said plaintiffs, from the premises described as the said Minnehaha lode mining claim, or that they are wrongfully withholding possession of the same from plaintiffs, or either of them, to the damage of plaintiffs, or at all.

Further answering, and as a second defense, defendants allege:

I.

That they, and each of them, are now, and were at all times mentioned in said complaint, and for several years prior thereto, citizens of the United States, over and above the age of twenty-one years; that at all times mentioned in said complaint, and for several years prior thereto, they were the owners of, and entitled to the possession of and possessed of, the above-mentioned Seraphim lode mining claim, and that defendants are now the owners of, and possessed of and entitled to the possession of, the said Seraphim lode mining claim, and each and every part thereof.

II.

That defendants, and each of them, are the owners of, and entitled to the possession of, said Seraphim lode mining claim, and each and every part thereof, as hereinafter described, and including that portion of said Seraphim lode mining claim alleged to be in conflict with the pretended and alleged Minnehaha lode mining claim as described in the complaint on file in this action, by reason and by virtue of and in compliance with the local laws and rules and regulations of the miners in the said Marshall Pass mining district, in the said county of Gunnison, in the state of Colorado, and the laws of the state of Colorado, and the laws

of the United States, and by discovery and location and prior possession of the said Seraphim lode mining claim.

[A statement of their discovery, location, and recordation set out in the manner made in the preceding form by the plaintiffs should be sufficient.]

Wherefore defendants pray judgment of the court as follows:

1. That it be adjudged and decreed by the court that the defendants are the owners of and entitled to the possession of said Seraphim lode mining claim, so alleged to be and claimed to be in conflict with the said Minnehaha lode mining claim;

2. That plaintiffs, nor either of them, take anything by their action herein;

3. That defendants have judgment for their costs and expenses in this action, and for such further and other relief as may to the court seem just and equitable.

—— ——, Attorney for Defendants.

FORM FOR OIL LEASE.

Form 61.

OIL LEASE.

This indenture, Made this twenty-fifth day of January, A. D. 1908, by and between Arthur Walsh, of the city and county of Los Angeles, California, lessor, and Constitutional Oil Company, a corporation created and existing under and by virtue of the laws of the said state, lessee,

Witnesseth: First. The said lessor, for and in consideration of the sum of one dollar ($1.00) to him in hand paid by said lessee, the receipt whereof is hereby acknowledged and the considerations and covenants hereinafter set forth, does hereby demise, let, and lease unto said lessee, its successors and assigns, that certain real property situate in the county of Ventura, state of California, and bounded and particularly described as follows, to wit: [Here insert description of the property.]

Second. Together with all the appurtenances thereof, for the purpose thereon and therein of drilling, boring, operating for, developing, and removing therefrom petroleum, oil, naphtha, natural gas, asphaltum, and kindred substances. The rights hereby given include all rights of mining for said substances; all rights of way over said leased property for pipes, pipe lines, roads, trails, flumes, ditches, and all rights to use and place on said leased property oil and water tanks, machinery, derricks, buildings, and telephone lines used in connection with the operation of this lease; the right to use any water thereon, or that may be developed on said leased property; and the right to use said leased premises for any and all purposes connected with the business or work that may be carried on by reason of or in pursuance of the rights and privileges granted by this lease, for the term or period of twenty (20) years from the date hereof.

Third. At all times during the life of said lease, lessee shall post and keep posted in a conspicuous place or places a notice or notices to the effect that said property is being worked and operated under a lease; that the owners of said premises are not and will not be liable for or pay for any labor performed upon said premises, or materials furnished therefor; that the said lessee is to be solely responsible for and will pay for any and all services rendered upon or in connection with or materials furnished for said premises.

Fourth. The said lessee, or its assigns or successors, shall do no act or thing which would cause a mechanic's or other lien or liens to be placed upon said premises, or any part thereof.

Fifth. The lessee shall be placed in immediate and peaceable possession of said premises, and shall begin operations on said land, and in the development of the deposits contained therein, and shall complete the sinking of one well thereon, within ninety (90) days from the date hereof, and shall complete the sinking of five (5) wells within one (1) year from the date of this instrument; and shall sink and complete at least two (2) wells each and every year after the said first year; all of said wells shall be sunk to a depth of not less than one thousand one hundred (1,100) feet, unless oil or kindred substances be found in paying quantities at a lesser depth; a well producing five (5) barrels of oil during each day of twenty-four (24) hours shall be considered as producing in paying quantities. The lessee shall deliver to said lessor, upon the fifth day of each and every month, during the existence of this lease, for the privileges herein conferred, and as rental in full for said premises, a royalty of one eighth (⅛) of the crude oil, petroleum, natural gas, naphtha, asphaltum, or kindred substances, obtained by lessee from said premises, during the preceding month.

Sixth. At all times during the life of this lease the lessor, or his representative, shall have the privilege of going upon said premises, and in every part thereof, for the purpose of inspection and of ascertaining whether or not the lessee is carrying out the terms, covenants, and agreements herein set forth.

Seventh. If default be made by the said lessee in the delivery of the royalties, as above provided, for more than twenty (20) days, or in the keeping of any of the covenants or agreements by it to be kept or performed, then the lessor shall have the right to re-enter upon and take possession of said premises, and, at his option, to terminate this lease.

In witness whereof, The said lessor has hereunto set his hand and seal, and the said lessee, by and through its duly qualified officers, and pursuant to a resolution of its board of directors, heretofore passed and adopted, has signed its corporate name and caused its corporate seal to be affixed the day and year in this instrument first above written, in duplicate.

ARTHUR WALSH.

CONSTITUTIONAL OIL COMPANY,

[Corporate seal] By CLIFFORD WALKER, President.[11]

Attest: EUGENE KENNEDY, Secretary.

[11] In a lease containing language similar to that contained in the fifth and seventh paragraphs of the above form of oil lease, the supreme court of California held that a failure diligently to prosecute the work constituted a forfeiture of the lease and all rights thereunder: Acme Oil & Min. Co. v. Williams, 140 Cal. 681, 74 Pac. Rep. 296.

FORMS OF ARTICLES OF INCORPORATION.

ARIZONA.
Form 62. Articles of incorporation.

CALIFORNIA.
Form 63. Articles of incorporation.

NEVADA.
Form 64. Articles of incorporation.

ARIZONA.

Form 62.

ARTICLES OF INCORPORATION OF ISABELLA MINING AND MILLING COMPANY.

Know all men by these presents, That we, the undersigned subscribers, —— ——, —— ——, and —— ——, each and all of whom are residents of the United States of America, do hereby associate ourselves together this day for the purpose of forming a corporation under the laws of the territory of Arizona, in the United States of America, and for that purpose do hereby make, execute, adopt, sign, and acknowledge these articles of incorporation.

First. The name of this corporation is and shall be "Isabella Mining and Milling Company."

Second. The principal place for the transaction of business of this corporation shall be the city of ——, in the county of ——, in the said territory of Arizona, and this corporation may have and maintain an office or offices in the city of ——, in the state of ——, and at such other place or places as the directors of said corporation may see fit to designate, at which city, or place or places, any and all meetings of the incorporators, stockholders, and directors of said corporation may be held, and all business pertaining to said corporation may be transacted and carried on.

The business of this corporation may be carried on in the

said territory of Arizona, and in any and all other places in the United States of America, in the Republic of Mexico, in the Dominion of Canada, and elsewhere, as may be deemed best by the directors of this corporation for the purposes of carrying out the objects and purposes for which this corporation is organized and created.

Third. The authorized amount of the capital stock of this corporation is and shall be —— dollars, divided into —— shares, of the par value of —— dollar— each.

The said capital stock shall be, and is hereby made, non-assessable by this corporation, or the directors thereof, or at all, for any purpose. Said capital stock may be paid for at the date of the issuance of the same, or at such other time and under such conditions as the board of directors of this company may designate, in money, property, labor, or any other valuable right, or equivalent, or thing, and the judgment of the board of directors of said company as to the value thereof shall be conclusive.

Fourth. The time of the commencement of the existence of this corporation shall be the date of the filing of a certified copy of these articles of incorporation in the office of the territorial auditor of said territory of Arizona, and this corporation shall endure and exist for twenty-five (25) years from and after the date of so filing the said certified copy of the articles with said last-mentioned official. Its charter rights may be renewed (before it ceases to exist), from time to time, for a period not in excess of twenty-five (25) years at any one time.

Fifth. The affairs and business of this corporation shall be conducted and controlled by a board of —— directors, each and all of whom shall be stockholders in said corporation, and such directors shall select from among themselves the following officers to be the officers of said corporation: A president, vice-president, and secretary. Such directors shall be elected the first time at the organization meeting of this corporation, and shall serve as such directors until the first annual meeting of the stockholders of this corporation. The annual meeting of the stockholders shall be held upon the second Monday in —— of each year, at the hour

of ——, in the forenoon. Such directors, so elected, shall be the directors of this corporation until their successors are elected and qualified.

Sixth. The persons who shall be and shall constitute the board of directors of this corporation until such meeting is held, and until their successors are elected and qualified, are as follows: —— ——, —— ——, and —— ——.

The aforesaid mentioned three officers shall be elected by said board of directors at their first meeting, and shall serve as such officers of said corporation for the first year, and until the holding of said annual meeting, and until their successors are elected and qualified. Said organization meeting shall be held within —— days from and after the date of the filing of said certified copy of these articles in the office of the said auditor of said territory of Arizona.

Seventh. The highest amount of indebtedness or liability, direct or contingent, to which this corporation shall at any one time subject itself shall not exceed the sum of —— dollars.

Eighth. The stockholders and the private property of the stockholders and incorporators of this company are and shall forever be exempt from any and all liability for any debt or liability of this corporation.

Any vacancy occurring in the board of directors may be filled by the appointment, by such board of directors, of any stockholder in this company to fill such vacancy. Such person so appointed to fill such vacancy shall be a director for the unexpired term of the person whose place he takes upon such board.

The board of directors of this corporation shall have the power and authority, and it is hereby granted to them, when not in conflict with the by-laws, to make any and all lawful contracts for and on behalf of this corporation for the purpose of successfully carrying out the objects and purposes for which this corporation is created.

Ninth. The purposes and objects, and the general nature of the business to be transacted and carried on, for which this corporation is created and organized, and the general nature thereof, are:

To own, possess, have, buy, sell, lease, operate, acquire, by location, exploration, denouncement, or otherwise, to encumber or otherwise dispose of mines, mineral lands, mill sites, and other lands, and mining property, both real and personal, stamp-mills, smelters, and all appliances and methods for treating and reducing and shipping ores, fluxing material, bullion, matte, and any and all things used in the treatment and reduction of ores and mineral substances, water and water rights for power, domestic, mining and other purposes, easements, rights of way for ditches, flumes, pipe lines, reservoirs, dams, tramways, roads, concessions, franchises, to be used in connection with mines belonging to or to belong to or operated by this corporation and used in connection therewith, and to build, construct, and maintain ditches, flumes, pipe lines, trails, reservoirs, dams, tramways, roads, used or to be used in connection with such mines or mineral lands or property; develop mines, mineral lands, and extract and ship, treat and reduce, and sell the values and ores and minerals obtained therefrom, and to buy and sell and treat ores and mineral substances, and to buy, lease, sell, erect, operate, and maintain smelters, stamp-mills, and any and all plants for the treatment and reduction of ores and minerals, and to buy and sell bullion and the product of ores and minerals; to buy, sell, lease, have, possess, and operate mining, smelting, and milling machinery and tools of every description for the treatment of ores and minerals; to erect, maintain, own, and have and operate power plants for the transmission of power by electricity or otherwise for the operation of mines, roads, smelting, milling, and plants for the treatment of ores and minerals belonging to or operated by this company, and to erect and lease and maintain buildings of any and all kinds necessary to use in carrying out the purposes and objects for which this corporation is formed.

To borrow money, and to encumber the corporate property as security for the payment therefor; to make, execute, sign, and deliver bonds, debentures, bills, promissory notes, and mortgages for and on behalf and in the name of this

corporation, for the purpose of acquiring and having and borrowing money to carry out the objects and purposes for which this corporation is formed and created; to create, issue, execute, buy, and sell stock and bonds of this corporation and other corporations, and to hypothecate the bonds and stock of this and other corporations as security for money borrowed or other indebtedness for or on behalf of this corporation and other corporations.

To do and perform each and all and every act and thing necessary, expedient, and proper to carry out the purposes, objects, and business for which this corporation is formed, and generally to do and perform any and all acts and other things necessary or useful to successfully carry out and maintain the objects and purposes for which this corporation is formed and created, and which natural individuals or persons may lawfully do or associate themselves together to perform.

In witness whereof, The aforesaid incorporators have hereunto set their hands and seals this —— day of ——, 19—.

—— ——
—— ——
—— ——

State of ——, } ss.
County of ——, }

Before me, —— ——, a notary public in and for the county of ——, state of ——, duly commissioned and sworn, on this —— day of ——, A. D. 19—, personally appeared —— ——, —— ——, and —— ——, each and all of whom are known to me to be the persons whose names are subscribed to the foregoing instrument, and each and all of whom, individually, and not for the others, acknowledged to me that they executed the same for the purposes and considerations therein expressed. My commission as notary public expires ——, 19—.

Given under my hand and seal of office this —— day of ——, A. D. 19—.

[Notarial seal] —— ——

Notary Public in and for the County of ——, State of ——.

CALIFORNIA.

Form 63.

ARTICLES OF INCORPORATION OF —— MINING COMPANY.

Know all men by these presents, That we, the undersigned subscribers, —— ——, —— ——, and —— ——, the majority of whom are residents of the state of California, in the United States of America, do hereby associate ourselves together this day for the purpose of forming and creating a corporation under the laws of the state of California, in the United States of America, and for that purpose do hereby make, execute, adopt, sign, and acknowledge these articles of incorporation.

First. The name of this corporation is and shall be "—— Mining Company."

Second. [The objects and purposes the same as in form for Arizona corporation, ante, Form 62.]

Third. The place where the principal business of this corporation shall be transacted and carried on is the city of Los Angeles, in the county of Los Angeles, in the state of California, and such other place or places as the directors of this corporation may see fit to designate. This corporation may also transact business in any and all parts of the United States and elsewhere.

Fourth. The term for which this corporation shall exist is fifty (50) years from and after the date of its incorporation.

Fifth. The number of directors or trustees of this corporation shall be three, and the names and residences of such directors or trustees who are appointed for the first year to serve as such directors, and until the election and qualification of their successors as such directors are as follows, to wit:

Names.	Whose residence is at
—— ——,	Los Angeles, California.
—— ——,	Los Angeles, California.
—— ——,	Los Angeles, California.

Sixth. The authorized amount of the capital stock of this corporation is and shall be one hundred thousand dollars ($100,000) divided into one hundred thousand shares, of the par value of one dollar each.

Seventh. The amount of said capital stock which has been actually subscribed is three hundred dollars ($300), and following are the names of the persons by whom the same has been subscribed, and the number of shares subscribed by each of said persons is as follows, to wit:

Name.	Number of shares.	Amount.
—— ——	One hundred shares.	$100.00
—— ——	One hundred shares.	$100.00
—— ——	One hundred shares.	$100.00 [12]

In witness whereof, The aforesaid incorporators have hereunto set their hands and seals this —— day of ——, 190—.

—— —— [Seal]
—— —— [Seal]
—— —— [Seal]

State of ——, }
County of ——, } ss.

On this —— day of ——, in the year nineteen hundred and ——, before me, —— ——, a notary public in and for the county of ——, state of ——, duly commissioned and sworn, personally appeared —— ——, —— ——, and —— ——, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

[Notarial seal] —— ——
Notary Public in and for the County of Los Angeles, State of California.

[12] If the incorporators desire to have preferred stock, the articles must so state. See Stats. 1907, § 6, p. 348, ante, p. 557.

NEVADA.

Form 64.

ARTICLES OF INCORPORATION OF THE "INTERSTATE MINING AND MILLING COMPANY."

Know all men by these presents, That we, the subscribers, —— ——, —— ——, and —— ——, have this —— day of ——, A. D. 190—, voluntarily associated ourselves together for the purpose of forming a corporation under and by virtue of the laws of the state of Nevada.

1. That the name of said corporation is and shall be the "Interstate Mining and Milling Company."

2. That the place where the principal office of this company shall be located is the —— Building, at the corner of —— and —— streets, in the city of Tonopah, in the county of Nye, in the state of Nevada, but an office or offices may be maintained in the ——, city of ——, in the county of ——, in the state of ——, or at such other place or places as may seem best to the board of directors, or as may be provided for in the by-laws of said corporation.

3. The object and purposes for which this corporation is created, formed, and organized are: [The same as Arizona. See Form 62, ante.]

4. The amount of the capital stock of this corporation is and shall be —— dollars, divided into —— shares, of the par value of —— dollars each.

5. The names of each of the original subscribers to and for the capital stock of this corporation, and the amount actually subscribed for and actually paid for by each of such subscribers is as follows:

Name.	No. of Shares.	Amount.
—— ——	————	$——
—— ——	————	$——
—— ——	————	$——

6. That the period for which this corporation is created and formed is unlimited.

7. That the affairs and business of this corporation shall be governed and managed by a board consisting of three members, who shall be styled and called directors.

8. That said stock, after the amount of the subscription price or par value has been paid in shall not be subject to assessment to pay debts of the corporation, and shall not be assessed at any time or for any purpose, or at all.

In witness whereof, The aforesaid incorporators have hereunto set their hands and seals this —— day of ——, 190—.

—— —— [Seal]
—— —— [Seal]
—— —— [Seal]

State of ——,
County of ——, ss.

On this —— day of ——, in the year of our Lord one thousand nine hundred and ——, before me, —— ——, a notary public in and for the said county of ——, personally appeared —— ——, —— ——, and —— ——, each and all of whom are personally known to me to be the persons described in, and whose names are subscribed to, and who executed the within instrument, and each of whom, for himself, and not for the other, acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the county of ——, in the state of ——, the day and year in this certificate first above written.

[Notarial seal] —— ——
Notary Public in and for the County of ——, State of ——.

BY-LAWS.

In the preparation of by-laws for any corporation, the same must be drawn with a view to meeting the requirements of the peculiar statutes in force in the state or territory where the corporation is organized, or where it maintains its principal office. The following form will be a great aid in this direction, and in many cases will be sufficient as complete by-laws for any mining company.

FORM OF BY-LAWS.

Form 65.

At this the first meeting of the stockholders of the —— company, held at the principal office of the said company, at —— Building, in the city of ——, state of ——, the following by-laws were adopted by unanimous vote as the by-laws of said corporation; those present being the owners of and representing four fifths of the capital stock issued by said corporation.

ARTICLE I.

CORPORATE POWERS.

The corporate powers of this corporation shall be vested in a board of five directors, who shall be stockholders holding one or more shares of stock in their own names on the books of the corporation, and a majority shall constitute a quorum for the transaction of business.

ARTICLE II.

ELECTION OF DIRECTORS.

The directors shall be elected by ballot, at the annual meeting of the stockholders, to serve for one year, and until

their successors are elected. Their term of office shall begin immediately after election.

ARTICLE III.

VACANCIES.

Vacancies in the board of directors shall be filled by appointments by the other directors in office; and such persons so appointed shall hold office until the first annual meeting of the stockholders thereafter, or until their successors are elected and qualified.

ARTICLE IV.

POWERS OF DIRECTORS.

The directors shall have power:

1. To call special meetings of the stockholders when they deem it necessary; and they shall call a meeting at any time, upon the written request of stockholders holding one fourth of the issued capital stock.

2. To appoint and remove at pleasure all agents and employees of the corporation, prescribe the duties of such agents and employees, fix their compensation, and require from them security for faithful service.

3. To conduct, manage, and control the affairs and business of the corporation, and make rules and regulations, not inconsistent with the laws of the United States, the state of ——, or the by-laws of the corporation, for the guidance of the officers and management of the affairs of the corporation.

4. To incur indebtedness. The terms and amount of such indebtedness shall be entered on the minutes of the board, and the note or obligation given for the same, when authorized by the board of directors, and signed officially by the president and secretary, shall be binding on the corporation.

ARTICLE V.

DUTIES OF DIRECTORS.

It shall be the duty of the directors:

1. To cause to be kept a complete record of all their minutes and acts, and of the proceedings of the stockholders,

and present a full statement at the regular annual meeting of the stockholders, showing in detail the assets and liabilities of the corporation, and generally the condition of its affairs. A similar statement shall be presented at any other meeting of the stockholders, when thereunto required by persons holding at least one half of the issued capital stock of the corporation.

2. To declare dividends out of the profits of the corporation, when such profits shall, in the opinion of the directors, warrant the same.

3. To supervise all officers, agents, and employees, and see that their duties are properly performed. To cause to be issued to the stockholders, in proportion to their several interests, certificates of stock.

ARTICLE VI.

OFFICERS.

The officers shall be, a president, vice-president, secretary, and treasurer, which officers shall be elected by the board of directors. The compensation and tenure of office of all employees of the corporation shall be fixed and determined by the board of directors.

ARTICLE VII.

PRESIDENT.

The board of directors shall, at their first meeting, elect one of their number to act as president; and if at any time the president shall be unable to act, the vice-president shall take his place and perform his duties; and if the vice-president, from any cause, shall be unable to act, the directors shall appoint some other member of the board to do so, in whom shall be vested, for the time being, all the duties and functions of his office. The president, or in his absence the director appointed as above provided:

1. Shall preside over all meetings of the stockholders and directors.

2. He shall sign, as president, all certificates of stock, and all contracts and other instruments in writing which have first been approved by the board of directors.

3. He shall call the directors together whenever he deems it necessary, and shall have, subject to the advice of the directors, direction of the affairs of the corporation, and generally shall discharge such other duties as may be required of him by the by-laws of the corporation.

The president, or two of the directors, may call special meetings of the directors at any time, and notice shall be given of such called meeting by leaving a written or printed notice at the last known place of business or residence of each director, or by mailing to such director, to his last known post-office address, postage prepaid, at least twenty-four hours before the time of holding the said meeting, such notice of the meeting. Such service of notice shall be entered on the minutes of the corporation; and the said minutes, upon being read and approved at a subsequent meeting of the board, shall be conclusive upon the question of service. Any director may waive the serving of such notice, and the attendance of any director at such meeting shall be deemed a waiver of notice. No notice shall be required of the holding of the regular monthly meeting of the board of directors.

ARTICLE VIII.

SECRETARY.

The board of directors shall elect a secretary.

1. It shall be the duty of the secretary to keep a record of the proceedings of the board of directors and of the stockholders.

2. He shall keep the corporate seal of the corporation and the book of blank certificates of stock, fill up and sign all certificates issued, and make the corresponding entries in the margin of such book on such issuance; and he shall affix said corporate seal to all papers requiring a seal.

3. He shall keep a proper transfer-book, and a stock-ledger in debit and credit form, showing the number of shares issued to and transfered by a stockholder, and the dates of such issuance and transfer.

4. He shall keep proper account-books, and discharge such other duties as pertain to his office and as are prescribed by the board of directors.

5. The secretary shall serve all notices required either by law or by the by-laws of the company; and in case of his absence, or of his inability, refusal, or neglect so to do, then such notices may be served by any person thereunto directed by the president or vice-president of the company, or by any director. He shall be the custodian of the books, papers, records, and archives of the corporation.

ARTICLE IX.

THE TREASURER.

The treasurer shall receive the funds of the corporation, and shall deposit same in such bank or depository or depositories as the board of directors may direct, and pay them out only on the check of the company, signed by himself and countersigned by the president, or in such other manner or method as the board of directors, by resolution duly passed and reduced to writing, may direct. The offices of treasurer and secretary may be filled by the same person, as the board of directors, in writing, so direct.

ARTICLE X.

BOOKS AND PAPERS.

The books and such papers as may be placed on file by vote of the stockholders or directors shall at all times, in business hours, be subject to the inspection of any member of the board of directors.

ARTICLE XI.

CERTIFICATES OF STOCK.

Certificates of stock shall be of such form and device as the board of directors may direct; and each certificate shall be signed by the president and countersigned by the secretary, and express on its face its number, date of issuance, the number of shares for which and the person to whom it is issued.

The certificate-book shall contain a margin, on which shall be entered the number, date, number of shares, and name of the person expressed in the corresponding certificate.

ARTICLE XII.

TRANSFER OF STOCK.

Shares of the corporation may be transferred by the holders and owners thereof, or by the attorney legally constituted, or by their legal representatives, by indorsement on the certificate of stock. But no transfer shall be valid until surrender of the certificate and the transfer on the books of the company.

No surrendered certificate shall be canceled by the secretary before a new one is issued in lieu thereof; and the secretary shall preserve the certificate so canceled as a voucher. If, however, a certificate shall be lost or destroyed, the board of directors may order a new certificate issued upon such guaranties by the parties claiming the same as they may deem satisfactory.

ARTICLE XIII.

MEETINGS.

The annual meeting of the stockholders shall be held in ——, in the state of ——, on the second Monday in ——, at the hour of ten o'clock in the forenoon, in each year, and shall be called by a notice printed in one or more newspapers published in the city of ——, county of ——, state of ——, as the directors may direct, for at least ten days last preceding the day of meeting; and a notice in writing, signed by the president or secretary, mailed to the last known address of each stockholder. Special meetings of the stockholders may be called in the same manner as provided for the calling of the annual meeting, except that it shall not be necessary to publish any notice in the newspapers. Notice of special meetings shall state the object of the meeting.

No meeting of the stockholders shall be competent to transact business unless a majority of stock issued is represented, except to adjourn from day to day or until such time as may be deemed proper. If, however, for want of a quorum, or other cause, a stockholders' meeting shall not be held on the day above named, or should the stockholders fail to complete their elections, or such other business as

may be presented for their consideration, those present may adjourn from day to day, until the same shall be accomplished. The regular monthly meeting of the directors shall be held on the second Monday in each month, at the hour of —— o'clock, —. M.

ARTICLE XIV.

VOTING.

At all corporate meetings each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock. Such proxy shall be in writing, and filed with the secretary and exhibited at the meeting.

ARTICLE XV.

AMENDMENTS.

The by-laws may be repealed or amended at any meeting of the stockholders, by a majority vote of the issued stock of said company.

ARTICLE XVI.

SEAL.

The company shall have a corporate seal, consisting of a circle having on its face the words, "—— —— —— Company, Incorporated 19—, State of ——."

In witness whereof, We have hereunto set our hands and seals this —— day of ——, A. D. 19—.

—— ——
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Stockholders and Directors.

INDEX.

Abandoned claims. See tit. **Relocation.**
deemed unappropriated mineral lands in Oregon..... 687
in California 552
lode claims. See tit. **Lode claims.**
relocating, in Colorado..... 580
relocation of.
actual abandonment necessary to 152
in Arizona 535
in Colorado 580
in Idaho 585
in Montana 594
rights of relocator..... 594
in North Dakota..... 684
in South Dakota 692
in Wyoming 703
shafts. See tit. **Discovery-shaft.**
in California, fencing or covering..... 552
fencing or covering, in California..... 552
Abandonment.
action of owners of three fourths of claim..... 146
actual, necessary to relocation..... 152
as to, in general..... 144
granting permission to enter and locate, effect of..... 145
of claims in Philippine Islands..... 392
of mining claim. See tits. **Claim; Mining claim.**
as affecting dower rights..... 219
as to 219
in Philippine Islands..... 329
of portion of tract, in application for patent..... 174
omission of part of location..... 145
one tenant in common or partner going away, effect of..... 145
statutory provision regarding 145
takes place when..... 145
Abstract of title.
on application for patent..... 167
Acceptance of entry.
does not determine time of discovery..... 77
Accounts current. See tit. **Mining corporations.**
liability of president and directors for failure to have posted.. 568
Accuracy.
in description of mining claim in notice of location..... 115
strict, in marking lines of claim not required..... 94

Act of 1866. See tit. **Federal statutes.**
end line crossing lode 233
in force only six years 21
location of claim under 232
owner of patented claim, rights of 233
patents under 19
Act of 1872.
locating claim under 234
parallelism of lines 245, 247
rights of locator to veins, etc 234
Act of 1881.
purpose of act 21
relating to Alaska 21
Act of 1900.
relating to Alaska 22
Actions.
involving title or right of possession to mining claim in Colorado 580
of owners. See tit. **Abandonment.**
Actual possession. See tit. **Location.**
need not be maintained to make claim valid 7
Additional certificate.
allowed in Nevada when 602
in Colorado 579
Additional ground.
added through amended location 90
Additional powers.
to corporations in Nevada 625
Adit.
run along lode, equivalent to shaft 89
will hold lode claim in Colorado 577
Adjacent land.
use of, for development purposes 28
blacksmith-shop on 28
boiler-house on 28
carpenter-shop on 28
railroad-track on 28
stable on 28
waste-dump on 28
Adjoining claims. See tit. **Group of claims.**
owner of several, assessment-work on. See tit. **Assessment-work.**
as to, generally 137
claims must be contiguous 138
excavation made upon one of group 138
situation disclosed in most of the decided cases 138
work on patented claim 138

Adopting monuments of previous location. See tit. **Monuments.**
Advances. See tit. **Débris commission.**
of mine-owners to débris fund 380
Adverse. See tits. **Adverse claim; Adverse proceedings; Adverse suit; Protest.**
failure to file, effect of 193
who may 190
Adverse claim. See tits. **Adverse; Adverse proceedings; Adverse suit; Protest.**
between town-site and mineral claimants.
in Alaska Federal district court 284
in Wyoming 283
costs in 332
description of vein or lode claims. See tits. **Claims; Lodes; Veins.**
fee for 489
findings by jury 332
form of 789
in Alaska, to coal-lands 369
in business hours 192
in Philippine Islands 395
land-office regulations respecting 432, 434
nature of 188
must be filed when 192
oath of claimant, before whom made 332
on holidays, as to 193
proceedings on 331
protest of owner is not an 188
purpose of 188
time of, method of computation 193
Adverse ownership.
allegations of, not a protest 188
Adverse proceedings. See tits. **Adverse; Adverse suit; Adverse ownership.**
adverse claim. See tit. **Adverse claim.**
during business hours 192
must be filed when 192
must be verified within land district 207
on holidays 193
time of, computation of 193
adverse claimant's application 208
answer in, form of 800
appeal, when to be taken 193
basis of protest filed 189
between town-site and mineral claimants.
as to, generally 282
In Alaska Federal district court 284
In Wyoming 283

Adverse proceedings (continued).
burden of proof in 203
by domestic corporation 202
commencement of adverse suit 198
complaint in, form of 795
conclusiveness of findings by court 208
effect of failure to file adverse 193
not applicable to joint owner 194
establishment of right to title 202
findings by court. See tit. **Findings.**
conclusiveness of 208
form of.
answer in 800
complaint in 795
dismissal of proceedings 208
judgment in. See tit. **Judgment.**
amount in controversy as affecting jurisdiction..... 206
as to, generally 205
effect of judgment 206
findings by the court 205
ground affected 205
proceedings after 206
jurisdiction of courts. See tit. **Jurisdiction.**
as to, generally 194
amount in controversy as affecting 206
equity jurisdiction 196
of Federal courts 194
of state courts 194
place of location of land as affecting 195
removal from state to Federal courts. See tit. **Removal.**
as to, generally 196
subject-matter of jurisdiction 195
methods of settlement of 192
must be filed when 192
nature and form of action 199
determined by state practice 199
in Alaska 200
in law and equity 199
necessary to determine rights in case of uniting veins..... 271
parties to 197
as to, generally 197
heirs of deceased claimant..... 197
pleadings in 200
prime purpose of 190
priority, as to rights of..... 203
proceedings after judgment in 206
proof in 200
protest basis of 189

Adverse proceedings (continued).
questions involved in 199
reasonable diligence in prosecution of..... 205
no exception to the rule 205
right to trial by jury..... 202
rule as to diligent prosecution, no exception to..... 205
title.
burden of proof as to 203
establishment of right to 202
in Indian reservation, evidence 204
in neither party, effect 204
of each party is in question 202
verification must be within land district 207
who may institute. See tit. **Adverse claim.**
agricultural claimant 191
co-owners 191
heirs of claimant 191
mill-site owner 190
placer claimant 191
tunnel-site owner 191
Adverse suit. See tit. **Adverse proceedings.**
burden of proof 203
by domestic corporation 202
commencement of 198
form of action.
as to, generally 199
determined by law or equity proceedings 199
determined by state practice 199
in Alaska 200
Indian reservation, property in 204
judgment. See tit. **Judgment.**
as to, generally 205
proceedings after 206
nature of action 199
pleadings in 200
priority determined 203
proof in 200
purpose of 190
question involved in 199
reasonable diligence in prosecuting 205
right to trial by jury 202
title.
in neither party, effect..... 204
of party, involved 202
Affidavit. See tit. **Proof.**
as to the posting of notice on claim..... 179
by authorized agent 179
notary public a stockholder, effect..... 179

Affidavit (continued.)
by third persons, as to contributions by co-owner, in Arizona 538
cannot be filed nunc pro tunc 181
jurisdiction of officer to take..... 180
of annual labor.
fee for filing 366
in Alaska.
as to, generally..... 365
form of..... 770
in Arizona, as to form.....534, 771
in California, form of 771
in Colorado.
as to form 578
form of 579, 587, 772
in Idaho.
as to form 579, 772
contents of 587
in Nevada, form of 773
in Utah, form of 773
in Washington, form of 774
in Wyoming, form of 774
time of filing 365
of assessment-work performed.
in Alaska 365
in Arizona.
as to, generally 534
form of 534
in Nevada 603
in Wyoming 706
of citizenship.
as to 180
before whom made 325
of claimant residing beyond limits of district..... 180
of location-work.
in Oregon 686
on placer claim in Washington, form of..... 757
of non-resident, may be taken within district 180
of publication, taken outside of district, effect of..... 180
of work done, filing, in Utah 695
on application to purchase.
coal-lands in Alaska 479
in Philippine Islands..... 389
sufficiency of, in protest proceedings 188
to accompany filing of notice of location 586
verification of 340
where to be made in application for patent..... 179

Agent. See tits. **Attorneys; Location; Patents; Resident agent.**
employee of owner of claim as..... 69
estoppel of, to assert interest 70
in proceedings before district land-offices, etc.
laws and regulations governing recognition of.....519-523
regulations governing recognition of.....521-523
rules governing recognition of.....515-519
may make location of mining claim 69
of foreign corporations, in California..... 561
of original locator may make relocation..... 155
penalty for foreign corporation's failure to appoint, in Nevada 679
ratification by principal 70
proof of 70
Agents and attorneys.
recognition before district land-offices, rules and regulations respecting 479-483, 519-523
Agreement.
fixing lines. See tit. **Lines.**
as to 242
not to partition mine, void..... 317
publisher's 717
Agricultural Department.
control of forest reserves transferred to..... 352
jurisdiction within forest reserves 352
Agricultural lands.
adverse proceedings by agricultural claimant..... 191
disposal of mineral lands as, in Alabama..... 344
following vein in its dip into 235
how set apart 343
restoration of, to public domain..... 351
unpatented, in the Philippine Islands 386
Alabama.
disposal of mineral lands in, as agricultural lands..... 344
Alaska. See tits. **Act. 1884; Act 1900; Alaska statutes; Federal statutes.**
absence of local rules and regulations, effect on forms..... 727
act of 1884 21
act of 1900 22
additional land districts in.
Fairbanks district 366
Nome district 366
adverse claim in.
and suits between town-site owners and mineral claimants in 283
as to, generally..... 200

Alaska (continued).
affidavits. See tit. **Affidavit.**
officer before whom may be made 365
time of filing affidavits 365
annual improvements, etc. 365
as to, generally 21
change of recording districts 363
civil government act, in effect when 367
coal-lands in.
adverse claims 369
as to, generally 367
land-office regulations respecting 464-479
who to receive patents for 368
contents of affidavits in 365
contiguity of lode in, what is 62
divided into three recording divisions 361
fees.
of recorder 366
of registers and receivers 366
filing affidavits in 365
forest reserve of, removal of timber from 353
forfeiture in 365
land-office regulations respecting 441
location-certificate, record of, in 130
location in. See tit. **Location.**
mineral privileges acquired under 21
miners may make rules and regulations in, when 363
mining laws in 364
mining rights.
extended to district of 361
in, to native-born Canadians 360
mission lands in, occupants of, not to be disturbed 364
missionary stations in 364
no statutory requirement in, as to forms 727
notice of placer location in 729
occupants of school or mission lands in, not to be disturbed .. 364
officer before whom affidavits in, may be made 365
performance of work in, prima facie evidence of 365
privilege of acquiring full title 21
proof of annual labor in, form of 770
provision for government of 361
purpose of act of 1884 21
recorded, what to be, in 363
recorder in districts of 362
recording districts of.
as to, generally 362
change of districts 363

Alaska. Recording districts of (continued).
recorder 362
what to be recorded 363
where instruments to be recorded 363
register and receiver in, clerks of court and marshals to act as 366
no salaries 366
fees, etc 366
repeal of conflicting laws 369
school lands in, occupants of, not to be disturbed 364
surveys and approvals 367
what to be recorded 363
where instruments recorded 363
Aliens.
act of Congress of May 14, 1898 68
as to, generally 67
as to right to locate mining claims 67
becoming citizen after location 68
inheritance by 69
may hold and transfer mining claims 68
may locate mining claim 68
modern doctrine 68
Allotment.
of expenses for common dumping-ground in hydraulic mining 377
"Along the vein." See tit. **Lode claim.**
as to meaning of 42
Alum.
land containing, may be located as placer 46
Amendatory certificates. See tit. **Amended certificate.**
allowed when, in Nevada 602
in Colorado 579
Amended certificate. See tit. **Amendatory certificate.**
of location, in Washington 697
may be filed, in South Dakota 691
Amended location. See tit. **Location.**
additional ground added through 90
in Idaho 588
in Montana 594
notice of, form of 761
Amended location notice.
form of 761
Amendment. See tits. **Corporations; Notice of location.**
and changes after organization of corporation 641
by corporations formed under others acts, in Nevada 642
errors and omissions cured by, in Nevada 640
of notice of location.
as to, generally 118

Amendment. Of notice of location (continued).
effect of 119
in Arizona 533
object or purpose of 119
relocation for purpose of correcting defects in..... 119
to rules regulating 414
removal of place of business of corporation without, in Nevada 654
to location-certificate.
filing of 130
in Colorado 130
in Montana 130
Annual assessment-work. See tits. **Annual labor; Assessment-work.**
in California 550
non-performance of 550
Annual improvements, etc.
in Alaska..... 365
Annual labor. See tits. **Assessment-work; Forms.**
affidavit of, in Colorado 578
amount of, in North Dakota 684
in Alaska 365
in Idaho.
contents of affidavit of 587
effect of proof of, as evidence 587
proof of 587
in Philippine Islands 392
proof of.
in Alaska, form of 770
in Arizona, form of 770
Annual license tax. See tit. **License tax.**
for part of year 570
to be paid, in California 568
Annual reports.
of California débris commission..... 373
Answer.
in adverse proceedings, form of..... 800
Apex. See tit. **Veins.**
cannot be followed beyond exterior lines, in Colorado..... 577
course of, ascertained by sinking shaft..... 236
doctrine of, in Nevada..... 602
in Colorado, includes what..... 577
what constitutes 236
within boundaries of claim, rights conferred..... 236
Appeals.
from decision rejecting application to enter public lands..... 506
from rejection of adverse claim 193
in contest cases 503
in district land-offices, etc..... 515

Application for patent. See tits. **Application to purchase; Patent.**
associate without interest, effect on proceedings..... 170
delay in prosecuting, effect of 173
existing rights pending 334
form in 714
ground embraced within 171
claim divided in two parts by ground of another..... 172
claim in two land districts 173
"contiguous," meaning of 171
where claim sought to be patented is a placer..... 716
where made for a mill site 716
where placer location is one that cannot be taken up and patented 716
who may make.
a company 159
a corporation 159
a person 159
an associate 159
as to, generally 159
one interested in the group 159
Application to purchase. See tit. **Application for patent.**
claim in Philippine Islands..... 389
affidavit 389
coal-lands in Alaska, land-office rules and regulations respecting 478
entry and patent 357
final entry 174
form of 722
lode claim, form of 723
notice of 178
objections to 357
penalty for false swearing on..... 356
publication of 357
proofs of 357
register's certificate 175
Applications.
fees for 489
for order of survey. See tit. **Survey of claim.**
as to 160
signature of application 160
of adverse claimant 208
Appropriated lands. See tit. **Appropriation.**
placing monuments of mining claim upon 101
Appropriation. See tit. **Appropriated lands.**
lands subject to 25
of land grant to state, in Nevada 613

Approval. See tit. **Survey on application for patent.**
as to 164
of surveys, in Alaska 367
Argument.
before Secretary of Interior 508
Arizona.
articles of incorporation in, form of 807
citizens of, may fell and remove timber from public domain.. 353
corporation laws of.
articles of incorporation, etc., to be filed..... 546
duty of officers 546
as to, generally 539
by-laws, what may provide..... 548
fees to resident agent..... 545
foreign. See tits. **Agent; Foreign corporations.**
formation of private corporations..... 540
text of Arizona statutes 540-549
mining laws.
abandoned claim, location of 535
acknowledgment of contribution by delinquent co-owner... 537
affidavits of third persons as to contribution by co-owner... 538
amendment of location-notice 533
assessment-work.
as to, generally 533
affidavit as to 534
form of affidavit 534
boundaries, marking 531
co-owner.
acknowledgment of contribution by delinquent..... 537
penalty for failure to acknowledge..... 537
affidavits by third persons..... 538
forfeiture of interest of 536
record of forfeiture as evidence 537
discovery-shaft. See tits. **Discovery-shaft; Shaft.**
equivalent of 533
time to sink 533
equivalent of discovery-shaft 533
forfeiture.
of claim by failure to comply with statute 533
of interest of co-owner 536
record of, as evidence 537
location.
of abandoned claim 535
manner of locating placer claim 535
who may make 531

Arizona. Mining laws (continued).
location-notice.
allowed to monument claimant 533
amendment of 533
time to record copy 532
time to sink discovery-shaft 532
manner of marking surface boundaries 533
marking boundaries 531
monuments, how placed to placer claims 536
notice of location.
must contain what 532
recording of 536
notice of lode location in 728
placer claim.
forfeiture of interest of co-owner 536
record of forfeiture as evidence 537
how monuments must be placed 536
manner of locating 535
recording notice of location 536
proof of annual labor. See tit. **Annual labor.**
as to form of 534, 771
record of forfeiture of interest of co-owner, as evidence..... 537
recording notice of location 536
relocation in, mode of 152, 154
statute.
declaring mining a public use 295
failure to comply with, forfeits claims..... 533
must be complied with 532
time to record copy of location-notice..... 532
who may make location 531
Articles of incorporation.
agent, in California 561
by-laws, in California..... 559
certificate of stock.
in California, how issued 562
certified articles of foreign, to be filed in California..... 561
penalty for failure to file..... 562
directors, in California 560
domestic corporations, in California..... 558
elections in California.
by ballot 560
cumulative voting 560
executed in California how..... 577
fees of secretary of state in California.
as to 558
for foreign corporations 561
filed and recorded where, in California 558

Articles of incorporation (continued).
filing articles in other counties, in California..... 560
filing copies of, in other counties, in Nevada..... 655
filing in other counties, in California 561
filing of, in Arizona..... 546
duty of officers as to 546
form of.
in Arizona 807
in California 812
in Nevada 814
in California, must contain what 557
incorporators may amend, in Nevada, before payment of deposit 639
mining corporations. See tit. **Mining corporations.**
in California.
consolidation of. See tit. **California, Corporation laws.**
protection of stockholders..... 563
surrender of certificate on transfer..... 563
transfer agencies in other states..... 563
subscription to, in California 558
validating of, in Nevada 662
what must set forth, in Nevada 621
Asphaltum.
land containing, may be located as placer..... 46
Assessment-work. See tit. **Annual labor.**
affidavit of work performed 603
amount of, required, in Nevada 603
by whom work to be done 139
claims held in common.
aggregate expenditure of labor or improvements.....137
as to, generally..... 137
claims must be contiguous 139
excavation made upon one of group 138
group of claims 138
oil claims. See tit. **Oil claims.**
owner of several adjoining claims 137
situation disclosed in decided cases..... 138
work on patented claim 138
co-owners.
by 140
notice to co-owners 142
publication of 143
of claim not relieved from proportion of..... 329
publication of notice to co-owners 143
where claim that co-owner has forfeited interest..... 141
who is a co-owner..... 141
discovery-shaft part of, in Oregon..... 686

Assessment-work (continued).
effect of record of proof of 698
excuse for not performing labor 139
expenditure of money on tunnels 328
in Arizona.
affidavit of, requirements 534
as to, generally 533
form of 534
in Wyoming. See tit. **Wyoming.**
not a question for land department..... 140
not necessary after entry..... 134
performance of labor.
as to 140
in suit in support of adverse claim..... 140
issuance of patent 140
proof of. See tits. **Annual labor; Proof of labor.**
as to 140, 697
in Washington 774
purpose of statute 133
required for oil claims 327
road-building as, in Washington 700
sailors and soldiers in war with Spain relieved from..... 328
notice of enlistment to be given..... 329
several claims held in common..... 137
soldiers and sailors in war with Spain relieved from..... 328
source of requirements.
acts of Congress regulating..... 133
as to 132
Federal mining act..... 133
time when work to be done 134
tunnel claims, on..... 143
valuation of work or labor 136
what constitutes labor or improvements 134
work done outside of claim..... 136
Assignees.
of locator, may mark claim 100
Attorneys.
in proceedings before district land-offices, etc.
laws and regulations governing recognition of.....519-523
regulations governing recognition of.....521-523
rules governing recognition of 515-519
recognition of, before district land-offices, etc. See tit. **Rules of practice before district land-offices, etc.**
Auction.
sale of saline-lands at, in Philippine Islands..... 404
Authority.
of California débris commission .....371, 384, n.

Averment.
of miners' rules and regulations not necessary..... 17
Balance-sheets.
to be kept by mining corporations, in California..... 565
verified by oath of whom 565
Ballot.
election to be by.
in California 560
in Nevada 630
Banking powers.
definition of, in Nevada corporation law..... 625
Bankruptcy.
applies to mining corporations 358
Banks. See tits. **Agents; Resident agents.**
may be resident agents of corporations, in Nevada..... 628
Basis.
for determining value, in Nevada 615
Bering Sea. See tit. **Tide-lands.**
Black Hills forest reserve.
removal of timber from..... 353
Blacksmith-shop.
on adjacent land 28
Blazing tree.
as to working claim by. See tits. **Boundary lines; Marking claims.**
at some distance from boundaries of claim 103
Blind leads.
in tunnel site 60
Blind lodes or veins.
in tunnel right, in Nevada 608
Board of directors. See tit. **Corporations.**
vacancies in. See tit. **Vacancies in board of directors.**
Boiler-house.
on adjacent land..... 28
Bonds.
convertible into common stock, in Nevada..... 638
of consolidated company, in Nevada..... 646
of deputy mineral surveyors, in Philippine Islands..... 401
Books.
to be kept by mining corporations, in California..... 565
Borax.
land containing, may be located as placer 47
Boundaries of mining claim. See tit. **Boundary lines.**
apex of vein outside of. See tits. **Apex; Vein.**
changing course of 107
locator cannot change lines to embrace other ground..... 108

Boundaries of mining claim (continued).
course of.
changing of 107
locator cannot change lines 108
generally 100
how defined, in Nevada 600
in Washington 696
locating, in Montana.
as to, generally 591
monuments. See tit. **Monuments.**
sufficiency of, question of fact 591
when and how marked 591
marking of.
in Arizona 531
in Colorado 576
manner of 576
in Idaho 586
in Oregon 686
in Utah 694
in Wyoming 702
of placer claims, in Idaho 586
of tunnel site 58
strict accuracy not required 94
marking surface.
in Arizona 533
in New Mexico 682
in South Dakota 690
markings, obliterating 108
California doctrine 108
mode of marking 100
monuments. See tit. **Monuments.**
locating, in Montana, sufficiency 591
may be established by assignees of locator 100
necessity for.
as to, generally 98
in placer claims 98
California doctrine 99
Montana doctrine 99
tunnel claims 99
obliteration of markings 108
California doctrine 108
of lode claims, in Idaho, marking 584
of mill site, in Nevada, marking 607
of placer claim.
in Nevada, marking 605
on application to purchase 177

Boundaries of mining claim. Of placer claim (continued).
sufficiency of marking.
as to 100
monuments. See tit. **Monuments.**
blazing tree adjacent to claim 103
conflicting corners 104
local statutes governing.
as to, generally 106
Colorado statute 106
Oregon statute 107
Montana statute 107
miners' rules and regulations regarding..... 105
mistake in placing, does not render claim invalid 101
notices posted on the corners of claim 103
setting post at or near discovery-point..... 103
several locators, priority of rights 104
stakes, posts, etc. 102
stakes driven firmly into the ground at each of the four corners 103
notice posted upon tree 101
placing on appropriated lands 101
question as to, depends upon what..... 100
subsequent locator cannot object 101
time of marking 99
Boundary lines. See tit. **Boundaries of mining claim.**
as determining extralateral rights. See tit. **Extralateral rights.**
in suit to determine extralateral rights 241
of tunnel right, in Nevada 608
must control rights of claimant 239
Brick-clay.
land containing, cannot be located as placer 47
Building-stone. See tit. **Building-stone lands.**
Building-stone lands.
entries, in Philippine Islands 397
entry under placer mining laws 336, 358
land containing, may be located as placer 47, 48
Burden of proof. See tit. **Evidence.**
as to damages in running tunnel through other claims..... 574
to establish forfeiture by failure to do assessment-work..... 149
Bureaus.
of Department of Interior, agents and attorneys before. See tits. **Agents; Attorneys.**
Business hours.
adverse claim must be filed during 192
By-laws.
form of 816
how made, in Nevada 631

By-laws (continued).
in Arizona, may provide what 548
in California 559
California. See tit. **Débris commission.**
affidavit of annual labor, form of 771
articles of incorporation in, form of..... 812
authority of Secretary of War in restraining or impounding mining débris in 383
corporation laws of.
articles of incorporation.
filed where 558
how executed 557
must contain what..... 557
recorded where 558
subscription of 558
by-laws.
as to, generally 559
filing articles in other counties 560
other counties, filing articles in 560
certificates of stock, how issued..... 562
consolidation of mining corporations.
calling meeting of stockholders, notice of 564
certificate of consolidation, where filed 564
due notice must be given of 564
must not take place without written consent 564
notice of meeting of stockholders 564
to be signed by board 564
written consent of stockholders 563
cumulative voting at elections 560
directors 560
domestic corporations 558
elections by ballot 560
cumulative voting 560
fees to secretary of state 558
filing articles in other counties 560
foreign corporations.
must designate agent..... 561
must file certified copies of articles 561
penalty for failure to file 562
must pay same fees as domestic 561
penalty for failure to file copy of articles 562
mining corporations. See "Mining laws," this title.
annual license tax.
for part of year 570
must pay 568
balance-sheets to be kept by secretary 565
books of, to be kept by secretary 565

California. Mining corporation laws of. Mining corporations (continued).
consolidation of. See "Consolidation of mining corporations," this title.
directors.
failure to have reports and accounts current made and posted 568
liability of 568
refusal to permit examination, damages 568
removal of 568
duty of superintendent 567
failure of superintendent to obey orders 567
for part of year, license tax 570
inspection of books and balance-sheets by stockholders.. 565
liability of president and directors 568
refusal to permit examination, damages 568
monthly balance-sheets.
to be kept by secretary 563
to be verified by oath of whom 565
must pay annual license tax 568
for part of year 570
protection of stockholders 563
right of stockholders to visit mine with expert.
as to, generally 567
duty of superintendent 567
failure of superintendent to obey orders 567
right to inspect books and records.
absolute right 566
reason or occasion for examining 567
stockholders. See tit. **Stockholders.**
right to examine mining property 565
right to inspect books, etc 565
superintendent.
duty of 567
failure to obey orders 567
open to inspection 566
report attached to account 566
to file monthly account 566
what monthly account of, to show 566
other counties, filing articles in 560
transfer agencies.
how established in other states 563
stock at 563
surrender of certificate on transfer 563
débris commission. See tit. **Débris commission.**
doctrine.
as to marking placer claims 99
of, in relation to conflict of customs with statute 14

California. Doctrine (continued).
respecting conflict with statutes of miners' rules and regulations 14
may pay half expenses for restraining-dams and settling-reservoirs 382
mining laws. See "Mining corporations," this title.
abandoned shaft, fencing or covering 552
annual labor, proof of 550
drainage 550
easement 550
forfeiture for non-performance of work..... 550
mining 550
mining bells. See tit. **Mining bells.**
rules for enforcing 553
signals 552
mining claims.
abandonment of 552
covering abandoned shaft 552
fencing abandoned shafts 552
proof of annual labor 550
protection of workmen 554
right of way 550
working 550
workmen, protection of 554
notice of location, no statutory requirement as to form of.... 731
statutes declaring mining a public use..... 291
Code of Civil Procedure governs 291
statute of 1907 293
California débris commission. See tit. **Débris commission.**
California statutes. See tit. **State statutes.**
Canada.
native-born citizens of, mining rights in Alaska..... 360
Canals.
right of way for 342
Cancelation.
of entry does not restore land to public domain 28
of perfected Spanish concessions, in Philippine Islands..... 406
Capital. See tits. **Capital stock; Corporations.**
filing certificate upon payment of, in Nevada 638
Capital stock.
decrease of, in Nevada.
liability not affected by 646
method of 642
payment of, in Nevada 635
reduction of, in Nevada 654
sale for non-payments of calls, in Nevada 636
subdivided, in Nevada 653
when company may buy its own 636

Carpenter-shop.
on adjacent land 28
Certificate of incorporation. See tit. **Corporation.**
errors and omissions in, cured by amendment, in Nevada.... 640
incorporators may amend, in Nevada, before payment of capital 639
what must set forth, in Nevada 621
Certificate of labor.
need not be sworn to, in Nevada 609
Certificate of location.
amended, in Washington 697
contents of record See tit. **Record.**
amendments to. See tit. **Amendments.**
as to, generally 130
in Colorado 130
in Montana 131
as to, generally 127
effect of record as evidence 131
natural or permanent monuments 127
state statutes. See tit. **State statutes.**
as to, generally 127
in Alaska 130
in Colorado 127
in Montana 128
recent doctrine 129
voiding locations for defects in, in record 128
distinction between location and recording..... 120
for lode claim, in Utah, form of 752
in Wyoming, must be filed within sixty days 123
local rules, regulations, and statutes. See tit. **Miners' rules and regulations.**
as to, generally 121
local statutes 121
in Oregon 121
need not be sworn to, in Nevada 609
of lode claim, in Wyoming, form of 758
of lode claim to be recorded, in North Dakota, form of..... 747
record of, as evidence 131
Wyoming, in, must be filed within sixty days..... 123
recordation.
as evidence 131
effect of failure of 123
under the Colorado statutes 124
under the Idaho statutes 125
under the Nevada statutes 124

Certificate of location (continued).
recording.
as to, generally 120
Colorado statutes require 123
effect of failure to, within time 123
in computing time for filing, Sunday excluded.....123, n.
rule for computing time .....123, n.
in Wyoming, certificate must be filed for, within sixty days 123
laws of United States.
do not, in terms, require recording 123
do not prescribe time 122
object of 120
where required 122
shall contain but one location.
in Colorado 580
in Nevada 605
verification of. See tit. **Verification.**
as to 125
in Montana 125
upon information and belief 126
Certificate of purchase.
of mining claim, equivalent to patent 210
Certificates. See tits. **Certificates of labor; Certificates of location.**
amended, may be filed, in South Dakota 691
can contain but one location, in South Dakota 693
construed to contain what, in South Dakota 691
defective. See tit. **Defective certificates.**
filing and recording copies of, in Nevada 674
filing, upon payment of capital stock, in Nevada 638
in North Dakota.
amended 684
construed to contain what 684
may be void when 683
to contain but one location 684
of consolidation of mining corporations in California, filed where 564
of improvements. See tit. **Improvements.**
of location of lode.
in Oregon, form of 749
in South Dakota, as to form 751
to be recorded, in Montana, form of 738
of location of placer claim to be recorded, in Nevada, form of 744
of register, for posting, in South Dakota, form of..... 751
of register, in application to purchase. See tit. **Register's certificate.**

Certificates (continued).
of survey.
and surveyor, part of record, in Nevada..... 602
in Montana..... 596
of surveyor-general. See tit. **Surveyor-general.**
record of, in South Dakota..... 688
fee for..... 693
to be recorded with county recorder, in Nevada..... 609
void when..... 689
Certificates of stock. See tit. **Lost certificates.**
in California, how issued..... 562
stockholders entitled to, in Nevada..... 650
Certified copies.
of plats and records by surveyors-general, fees for..... 492
Certified copy of articles of incorporation. See tit. **Articles of incorporation.**
must be filed, in California..... 561
penalty for failure to file..... 562
Certiorari.
in proceedings before district land-offices, etc..... 515
petition for, must contain what..... 514
Change of districts.
in Alaska..... 363
Changes.
and amendments after organization of corporation, in Nevada. 641
Changing course.
of boundaries.....107, 108
Channel of stream.
definition of..... 14
right to exclusive use of..... 14
Character.
of lands, hearing and determining, land-office regulations respecting.....437-441
of newspaper designated for publication of notice..... 169
Charges. See tit. **Charges and fees.**
for office-work and stationery in survey of mining claims.... 488
Charges and fees. See tit. **Charges.**
statement of, on application for patent..... 720
Charter.
forfeiture of, in Nevada, for failure to commence business.... 648
renewal of. See tit. **Renewal of charters.**
Cherokee Outlet.
Federal mining laws not applicable to..... 33
Citizen.
corporation is a..... 170
native-born, of Canada, mining rights in Alaska..... 360
purchase of lands by, in Philippines..... 386

Citizenship.
affidavit of, before whom made 325
land-office regulations respecting, in Alaska 429
patent is conclusive as to 216
proof of. See tit. **Proof of citizenship.**
by applicant's own affidavit 169
corporation is a citizen 170
Federal statute not conclusive 170
in Philippine Islands 392
on application for patent 169
Civil government for Alaska. See tit. **Alaska.**
as to, generally 361
in effect when 367
Claim. See tits. **Abandoned claim; Location; Mining claims; Mining rights; Monument claim.**
application to purchase, in Philippine Islands 389
affidavit 389
boundaries of, in Montana, how marked 591
demarcation of. See tit. **Demarcation of claims.**
divided in two parts by ground of another, patent for 172
forfeiture of, in Arizona, by failure to comply with statute.... 533
in two land districts, patent for 173
locating. See tit. **Locating claim.**
lode claim. See tit. **Lode claims.**
manner of locating, in South Dakota 690
mining, as property. See tits. **Mines; Mining claims.**
not extended beyond exterior lines, in North Dakota..... 684
not to extend beyond exterior liens, in South Dakota 691
oath of, in adverse claim, before whom made 332
placer claim. See tit. **Placer claims.**
proof of posting notice and plat upon 713
recording.
in North Dakota 683
in Philippine Islands 391
right to tunnel through, in Colorado.
as to, generally 573
burden of proof 574
damages 574
inspection 574
ore extracted property of owners 574
purpose of tunnel 574
size of, in Philippine Islands 389
work done outside of. See tit. **Assessment-work.**
Claims held in common.
aggregate expenditure of labor or improvements 137
assessment-work on 137

Claims held in common (continued).
claims must be contiguous 139
excavation made upon one of group 138
owner of several adjoining claims 137
situation disclosed in most of decided cases 138
work on patented claim 138
Clandestine entry. See tit. **Entries.**
locator protected against 338
Coal-lands.
affidavit on application to purchase 479
application.
for patent of 182
to purchase 478
are mineral, within statute 478
conflicting claims 348
entry of. See tit. **Entry.**
as to, generally 346
in Alaska.
adverse claims 369
as to 182, 367
who may receive patents to 368
in Philippine Islands. See tit. **Philippine Islands.**
land-office regulations respecting.
action required by special agents 475-477
supplemental regulations 477
application for patent 471
as to, generally 455-464
in Alaska 464-472
instructions to registers and receivers at Juneau, Alaska. 472-474
lands not coal-lands 475
location of 67
notice.
for publication of entry 462
of location 470
supplemental regulations and instructions 474
only one entry allowed 348
pre-emption of 347
to be presented within sixty days 347
rights reserved 349
Coal-mine.
definition of 2
Collateral attack.
as between lode patentee and tunnel-site claimant 215
cannot be made on patents 214
in case of variance between the locus 215
on incorporation, in Nevada 649

Colorado.
actions involving title or right to possession of mining claim.. 580
survey by order of court, and proceedings therefor..... 580
affidavit of annual labor, as to form 587, 772
amendatory or additional certificate 579
certificate of location shall contain but one location..... 580
certificate of placer location to be recorded, form of..... 734
citizens of, may fell and remove timber from public domain... 353
damages, value of ore 581
excavations required before location-notice..... 123
first or preliminary notice for posting, form of..... 731
fixtures in mines in 218
location-certificate of placer.
recording, time of 572
what must state 572
lode claims.
adit, sufficiency to hold claim..... 577
additional or amendatory certificate 579
affidavit of annual labor 578
form of 579
amendatory or additional certificate..... 579
apex. See tit. **Apex.**
as to, generally 577
following trend beyond exterior lines 577
crossing or uniting.
as to, generally 574
rights of parties 574
discovery-shaft 576
end lines 577
length of 575
location-certificate.
contents of 575
discovery-shaft 576
time within which to be recorded 575
void when 575
marking boundaries of.
as to, generally 576
manner of 576
open crosscut, tunnel, or adit, sufficiency of, to hold claim.. 577
parol license for right of way for ditch, etc..... 578
posting notice of location 576
right of way for ditch, flume, etc., parol license..... 578
side lines 577
sixty days to sink discovery-shaft 577

Colorado. Lode claims (continued).
time to.
record location-certificate 575
sink discovery-shaft 577
tunnel, sufficiency to hold claim..... 577
uniting or crossing.
as to, generally 574
rights of parties 574
what location.
certificate shall contain 575
includes 577
width of, exceptions 575
marking boundaries of placer in 572
mines in, declared to be real estate..... 218
notice of location of lode mining claim to be recorded, form of 732
placer claims.
marking boundaries of 572
posting notice of location 572
recording location-certificate of.
as to, generally 572
time of 572
what location-certificate must state 572
partition of mining claims..... 582
posting notice of location of placer mine in 572
preliminary notice of placer claim for posting 733
recording location-certificate to placer.
as to, generally 572
time of 572
relocation in, mode of 152
relocation of abandoned lode.
as to, generally 580
certificate of location.
as to, generally. See tits. **Certificates; Location.**
shall contain but one location 580
right of way for water to lode claim 573
statutes declaring mining a public use.
prior to 1891 295
statute of 1891 297
vital question on statute 298
statute regulating extent, size, and shape of claims 91
statute regulating recordation of location-notice 124
tunnel claim.
must be recorded 573
ore extracted property of owners.
burden of proof 574
damages 574

Colorado. Tunnel claim (continued).
purpose of tunnel, inspection 574
right of way 573
size of 573
through claims 573
value of ore, and damages 581
Commission. See tit. **Débris commission.**
Commissioner.
of general land-office, proceedings before 508
appeal to the Secretary 509
arguments 508
attorneys before 512
decisions of 513
examination 508
rehearing 508
review 508
writ of certiorari. See tit. **Certiorari.**
as to, generally 514
petition for, should contain what 514
outside of land district, may take evidence on application for patent 183
Commissions.
none allowed for extra services when 491
Common stock.
as to, generally. See tit. **Corporations.**
bonds convertible into, in Nevada 638
Company.
patent may issue on application of 159
Compensation.
of California débris commission 371
of receivers, in Nevada 669
Complaint.
in adverse proceedings, form of 795
Compliance.
with miners' rules and regulations.
as to, generally 15
penalty for non-compliance 15
substantial compliance, sufficiency of 15
will be presumed when 15
with statute, in locating. See tit. **Location.**
Compulsory attendance of witnesses. See tit. **Witnesses.**
Conclusiveness.
of findings of state court upon Federal court in adverse proceedings 208
of patent as against direct attack 213

Conditions.
as to commencing operation in hydraulic mining..... 377
imposed in hydraulic mining, penalty for violating..... 378
of sale, fixed by local legislature 341
Conduct of business.
as to corporations. See tits. **Corporations; Mining corporations.**
in surveys of mining claims, requirements for.....484-488
Conflict of authorities.
as to right of eminent domain in mining 285
Conflicting claims. See tits. **Claims; Mining claims.**
in entry of coal-lands 348
to coal-lands, in Philippine Islands..... 404
Conformity.
of placer claim to surveys 334
Congress.
act of 1866 in force only six years 21
acts of. See tit. **Federal statutes.**
Alaska statutes.
as to, generally 21
purpose of Congress in this act 21
legislation of, prior to 1866.
as to, generally 18
patents under 19
where there were local rules governing as to possessory rights 19
Consideration.
for grub-stake contract 302
Consolidation.
of mining corporations. See tit. **Mining corporations.**
Construction.
of certificate. See tit. **Certificate.**
of miners' rules and regulations 17
Consultation.
of débris commission with state engineers 381
grub-stake. See tit. **Grub-stake contract.**
"Contact." See tit. **Lode.**
as to what constitutes 41
Contents and sufficiency of notice of location. See tit. **Notice of location.**
Contents of record. See tit. **Record.**
Contests. See tits. **Adverse; Adverse proceedings; Adverse suits.**
appeals.
as to, generally 503
from decision rejecting application to enter public lands.... 506
continuances 498
costs, taxation of 505
depositions on interrogatories 499

Contests (continued).
hearings of 494
intentions of 494
interrogatories, depositions on 499
notice of.
as to, generally 495
of proceedings 497
service of.
as to, generally 495
by publication 496
proof of 497
to encumbrancers 495
to transferees, when to be given 495
officers other than registers and receivers, oral testimony before 500
opinions 504
proceedings, notice of 497
rehearings 498
reports 504
taxation of costs 505
testimony before officers other than registers and receivers... 500
trials 501-503
Contiguous. See tit. **Contiguous claims.**
group of claims must be, when 139
Contiguous claims. See tit. **Contiguous.**
assessment-work on, in Wyoming 705
Continuances.
in contest cases 498
Continuity.
of vein or lode 237
test of 238
Continuity of lode claims.
as to what is 61
in Alaska 62
Contract.
grub-stake. See tit. **Grub-stake contract.**
Contribution.
by co-owner, in Arizona.
acknowledgment of 537
affidavits of third persons as to 538
penalty for failure to acknowledge 537
Conveyance. See tits. **Deed of bargain and sale; Quitclaim deed.**
end lines as fixed by 253
Co-owners. See tit. **Assessment-work.**
adverse proceedings by 191
as to, generally 140
delinquent, in Philippine Islands 392
forfeiture by, claim of 141

Co-owners (continued).
in Arizona.
acknowledgment of contribution by 537
affidavit of third persons as to 538
contribution by, acknowledgment of 537
forfeiture of interest of.
as, to, generally 536
record of forfeiture as evidence 537
may make relocation when 155
penalty for failure to acknowledge 537
notice to. See tit. **Notice.**
as to, generally 142
in Nevada.
as to, generally 604
penalty for failure to give 604
publication of 143
protest by, is not an adverse claim 188
who is a 141
Corners.
conflicting 104
setting posts at 103
Corporate existence.
begins when, in Nevada 623
Corporate rights.
as to, generally. See tits. **Corporations; Mining corporations.**
surrender of, before payment of capital stock, in Nevada..... 663
Corporations. See tit. **Mining corporations.**
amendment of articles before payment of capital, in Nevada 639
dissolution of, in Nevada.
appointment of receivers. See tit. **Receivers.**
as to, generally 664
continuation for what purpose 665
power of trustees after dissolution 666
trustees after dissolution 665
formation of, in Arizona. See tit. **Arizona, corporations.**
grants of lands to, not to include mineral lands 345
in Nevada, may hold stock in other corporations 675
is a citizen when 170
may be resident agents of foreign corporations, in Nevada.... 628
may make location of mining claim 70
purpose for which may be formed, in Nevada..... 620
resolution adopted by authorizing individuals to represent company in patent proceedings 710
stockholder in, may make relocation 155
surrender of corporate rights, in Nevada, before payment of capital stock 663
transfer of mining claim by 220

Costs. See tit. **Taxation of costs.**
in adverse claim 332
in contest cases 505
"Country."
definition of 42
"Country-rock."
definition of 42
County assessor.
statement of foreign corporation to be filed with, in Nevada... 680
penalty for neglect to file..... 680
County recorder.
duplicate notices to be filed with, in Nevada..... 611
fees for recording duplicate notices, in Nevada..... 611
to be ex officio district mining recorder, in Nevada 610
to notify mining recorders, in Nevada 612
penalty for failure 613
to record certificates, in Nevada 609
Course. See tits. **Following lode or vein on its dip; Lode claim.**
following, limited by boundaries of claim 231
meaning of 42
of boundary lines of claim, changing.....107, 108
of lines of mining claim controlled by stakes 117
Court.
finding by court. See tit. **Findings.**
in adverse proceedings 205
proceedings in, to obtain new certificates, in Nevada..... 652
revisory power of, in Nevada..... 633
Covering. See tit. **Shafts.**
abandoned shafts, in California 552
Creditor.
information for, in Nevada 657
right may be given to vote at corporate elections, in Nevada.. 626
"Cross." See tit. **Crossing or intersecting veins or lodes.**
not synonymous with "intersect" 266
Crossing or intersecting veins or lodes.
as to, generally 262
rights of parties, in Colorado 574
"space of intersection," phrase construed 262
in Arizona 262
in California 262, 263
in Colorado 266, 269
in Montana 262
in United States courts 265
Cumulative voting. See tits. **Corporations; Elections.**
in California 560
in Nevada 630

Customs. See tit. **Miners' rules and regulations.**
California doctrine respecting conflict 14
notable instances of conflict with statutory law 13
Cut.
in lieu of discovery-shaft, in Washington 697
Dakota.
Black Hills. See tit. **Black Hills forest reserve.**
citizens of, may fell and remove timber from public domain ... 353
Damages.
for injury to vested water rights, in Philippine Islands 401
in running tunnel through other claims, in Colorado 574
liability of officers for, caused by publication of false statement, in Nevada 657
value of ore as 581
Damnum absque injuria.
as to what constitutes 14
Débris. See tit. **Débris commission.**
authority of Secretary of War in impounding or restraining, in California 383
definition of 41
limit of, to be washed away 378
right of United States to regulate 375
Débris commission.
annual reports of 373
allotment of expenses for common dumping-ground 377
appointment of 371
authority and powers of ..... 371, 384, n.
authority, commission may reduce or revoke 378
California.
may pay half cost of restraining-dams and settling-reservoirs 382
relative to hydraulic mining 371
commission may reduce or revoke authority 378
compensation of members of 371
conditions by, as to commencing operations 377
conditions, penalty for violating 378
consultation of, with state engineers 381
contracts by, for restraining-dams and settling-reservoirs, how paid 382
"débris fund," advances from mine-owners 380
duties of 372
examinations of mines.
as to, generally 379
report of 379
expenses of 375
favorable decision by, within thirty days 375

Débris commission (continued).
hydraulic mining.
for, in California 371
without impounding-works 375
injurious mining prohibited by 371
joint petition to, of mining-claim owners requiring dumping-grounds 374
examinations 375
expenses 375
favorable decision within thirty days 375
hearings 375
hydraulic mining without impounding-works 375
no tax on gross proceeds to be collected when 375
order directing methods of mining, etc 375
publication of petition 375
taxes on gross proceeds 375
jurisdiction over hydraulic mining 371
limit of débris washed away 378
mileage in lieu of traveling expenses 384
no tax on gross proceeds to be collected when 375
noting effect on navigable channels 373
of California 318
order directing methods of mining 375
organization of commission 371
other process of mining not affected 374
payment for work on settling-dams and reservoirs, how made 383
penalty.
for violating conditions 378
for violations injuring navigation 379
permission to commence mining 376
petition for mining to be filed 374
powers of commission ..... 371, 384, n.
report of, on examination of mines 379
restraining-dams and settling-reservoirs.
as to 381
contracts may be made, half to be paid by state 382
payment for work, how made 383
to be built from special appropriations of débris fund 381
rules of procedure 371
Secretary of War, duty of, in restraining or impounding mining débris 383
study of methods 372
submission of plans, and work thereunder 376
surrender to United States of right to regulate débris 374
survey of débris-reservoirs 372

Débris commission (continued).
tax.
not to be collected when..... 375
on gross proceeds.
as to when made..... 375
of hydraulic mines 380
terms defined. See tit. **Words and phrases.**
"hydraulic mining," defined 373
"mining by the hydraulic process," defined 373
traveling expenses, mileage in lieu of 384
use of public lands and material 379
violating conditions, penalty for 378
violations injuring navigation, penalty 379
wilful injury to works 379
withdrawal from sale and entry 379
Débris fund. See tits. **Débris; Débris commission.**
restraining-dams and settling-reservoirs to be built from.... 381
Débris-reservoirs. See tits. **Débris commission; Surveys.**
Debts.
liability for, in grub-stake contract 305
Deceased claimant. See tit. **Heirs.**
Deceased miners. See tit. **Estates of deceased or incompetent miners and infants.**
Decisions. See tits. **Débris commission; Rules of practice before district land-offices, etc.**
motions for review or rehearing 513
of land department conclusive 184
of Secretary of Interior 513
on petitions for hydraulic mining to be given when..... 375
rejecting application to enter public lands, appeals..... 506
Declaratory statement. See tit. **Location-certificate.**
as to discovery-shaft, contents 87
fee for 489
in entry of coal-lands, in Philippine Islands 403
Decrease. See tits. **Corporations; Mining corporations.**
of capital stock, in Nevada, method of 642
Deed of bargain and sale.
estoppel to deny validity of location 223
of mining claim 222
of part of mining claim comprising several locations..... 224
rights conveyed by 223
Defective certificates.
amendatory or additional certificates 602
relocation 602
Defects. See tits. **Certificates; Defective certificates.**
in location in notice, correcting by relocation 119
in record, do not void mining locations when..... 128

Definition. See tit. **Words and phrases.**
of "along the vein" 42
of coal-mine 2
of contiguity of lode claim 61
in Alaska 62
of contiguity of vein 61
of "country" 42
of "country-rock" 42
of course 42
of "débris" 41
of "face of the tunnel" 56
of "known vein" 52, 54
of "line of the tunnel" 56
of location 5
of "lode" 36, 37, 39
of mine 1
of mineral deposit 2
of mineral lands 3
of "minerals" 2
of mining-ground 3
of placer mining 44
of strike 42
of tumble-stuff 41
of "unappropriated" 26, 27
of "unoccupied" 26, 27
of "vein" 36, 39
Delay.
in prosecuting application for patent 173
Delinquent part-owners. See tit. **Co-owners.**
Demarcation of claims.
difficult, in Philippine Islands 391
in Philippine Islands, as to 387
marking lines.
as to, generally 388
difficult, in Philippine Islands 387
removal of posts unlawful 389
Department of the Interior. See tit. **Rules of practice before district land-offices, etc.**
agents and attorneys before. See tits. **Agents; Attorneys.**
jurisdiction within forest reserves 352
Deposit.
for land-office fees on application for survey 160
Depositions.
on interrogatories, in contest cases 499
Deputies. See tits. **Recorder; Surveyor.**
appointment for survey of mining claims, land-office regulations respecting 434-437

Deputy mineral surveyors. See tit. **Deputy surveyor.**
in Philippine Islands, bond of 401
Deputy mining recorder.
in Idaho.
as to, generally 588
duty to transmit notices to recorder 588
other duties 588
Deputy surveyor. See tit. **Deputy mineral surveyor.**
appointment of, in Philippine Islands 399
charges for surveys 399
expenses of 399
field-notes of. See tit. **Field-notes.**
may execute survey on application for patent 162
report of. See tit. **Report.**
should contain what 163
to be forwarded to surveyor-general 163
to be verified by own affidavit 163
Description of mining claim.
sufficiency of, a question of law or fact 118
Designation. See tit. **Publication.**
of newspaper to publish application for patent 169
Development.
of placer claims, in Idaho, by excavation 586
use of adjacent land for purposes of. See tit. **Adjacent land.**
Diagrams. See tit. **Plats and diagrams.**
fees for 490
no fees, commissions, or rewards for, when 491
Directors. See tits. **Corporations; Meetings of directors.**
election of, in California 561
of mining corporation.
in California.
for failure to have reports and accounts current posted.. 568
liability for refusal to permit examination 568
qualifications for, in Nevada 630
removal of, in Nevada 658
Discoverer.
to record claim.
fee for recording 693
in North Dakota 683
when, and when recorded 688
Discovery. See tit. **Mineral.**
additional ground through amended location 90
by trespasser without color of title 6
by whom to be made 74
discovery-notice of lode 78
in shaft not necessary 90

Discovery (continued).
knowledge of prior discovery 74
mineral location founded upon actual 7
monument at place of, in Idaho 584
necessity of.
as to, generally 72
placer claims 73
tunnel claims 74
new, not necessary to valid relocation 155
of mineral upon government land 6
of mining claims, in Montana 590
place of.
as to, generally 74
claims cornering upon each other, non-contiguous 74
time of, with reference to location.
acceptance of entry and issuance of patent does not determine 77
as to, generally 76
time to investigate discovery before location 77
what constitutes a valid.
as to, generally 78
adit run along a lode 89
between what classes of claimants question may arise 82
discovery-shaft or opening 85
Colorado doctrine 88
Montana doctrine 85
equivalent of shaft 88
evidence.
as to, generally 83
of indications successfully followed in same district..... 84
where one claimant bases right on imperfect underground discovery 84
finding mineral rock in place 79
mere surface indications 79
question of fact 83
shaft to be sunk where 89
sufficiency of, as affected by character of contesting claimants 81
Alaska doctrine 82
the discovery 80
time for sinking shaft 90
under the Idaho statute.
as to, generally 80
as to placer claims 80
Discovery-notice.
for posting on lode claim, in Idaho, form of 734
of lode claim 78

Discovery of minerals.
effect on town site. See tit. **Town site.**
Discovery-point.
setting stakes and posts near 103
Discovery-shaft. See tit. **Discovery.**
additional ground added through amended location 90
amount of land allowed for 19
as to, generally 85
Colorado statute regulating 88
cut or tunnel in lieu of, in Washington 697
discovery in, not necessary 90
equivalent of.
adit run along lode 89
as to, generally 88
in Arizona 533
in Oregon 685
in Wyoming 703
in Idaho.
as to, generally 585
at point of discovery 585
time when must be sunk 585
in Montana, to be sunk when 592
in New Mexico.
depth to which to be sunk 682
equivalent of 682
in North Dakota.
equivalent of 684
locating lode claim by 684
in Utah 694
in Washington 696
in Wyoming 702
law governing 686
Montana statute regulating 85
must be sunk on unappropriated ground 89
part of assessment-work 686
time to sink.
as to, generally 90
in Arizona 532
in Colorado 577
as to, generally 576
Discovery-vein.
vein other than 257
Dismissal.
of adverse proceedings 208
Disputes. See tits. **Adverse claims; Adverse proceedings; Adverse suits.**
in Philippine Islands 391

Dissolution.
by mutual consent 305
of grub-stake contract 305
of receivership, in Nevada 667
Distinction.
between general custom and local regulation 9
between location and recording 120
none between metalliferous and non-metalliferous deposits... 228
District attorney.
can commence suit for penalty against foreign corporations, in Nevada 681
District of Alaska. See tit. **Alaska.**
land-office regulations respecting 441
District rule. See tit. **Miners' rules and regulations.**
as to mill sites 61
Ditch.
reservations in patents for right of way for 358
right of way for, in Colorado, parol license 578
Dividends.
as to, generally. See tit. **Corporations.**
in Nevada 653
Documentary evidence. See tit. **Evidence.**
Dormant application.
adverse claim in, as to 193
Dower rights.
abandonment as affecting 219
in mining claims 219
Drainage.
in California. See tit. **California.**
Dumping-ground.
allotment of expenses for, in hydraulic mining 377
Duplicate notices.
duty of mining recorders to give 611
fees.
for recording 611
to be collected for 611
to be filed with county recorder 611
Duty.
of mining recorders. See tit. **Mining recorders.**
of register and receiver of local land-office 351
Easement.
in California. See tit. **California.**
Egress.
from forest reserves by settlers 351
Ejectment.
possession which is sufficient for action in 6

Elections.
in California.
by ballot 560
cumulative voting 560
in Nevada.
cumulative voting 630
qualifications of directors 630
to be by ballot 630
Eminent domain.
conflict of authorities as to 285
foreign corporations are granted, in Nevada 681
in Montana 597
statutes declaring mining public use 286
in Arizona 295
in California 291
in Colorado 295
in Nevada 288
in Utah 286
Employee.
estoppel of, to assert interest 69
liens of, in Nevada 662
may make location as agent of owner of claim 69
of general land-office, location of mining claim by 71
ratification of location by principal.
as to, generally 70
proof of 70
Enactment.
of miners' rules and regulations, regularity of 12
Encumbrancers.
how to entitle themselves to notice of contest, etc. 495
End lines.
as fixed by conveyance 253
in Colorado 577
mining claim in shape of triangle 246
must be straight lines 253
not at right angles with side lines 253
parallelism of.
under act of 1866 247
under act of 1872 247-252
extralateral rights determined by 250
location made in substantial conformity to statute 252
side lines becoming 245
vein abruptly terminating before reaching 255
vein crossing and departing through side line 253
vein having apex outside of 258
vein other than discovery-vein 257

Enforcement.
of grub-stake contract as other contracts 302
Engine.
fixture in mine when 218
Enjoyment.
locator's right to, and possession 325
Enlistment.
notice of, to be given by soldiers and sailors 329
Entry.
and patent 357
building-stone, in Philippine Islands 397
by town authorities in trust for occupants 274
cancelation of, does not restore land to public domain 28
clandestine, locator protected against 338
fraudulent, locator protected against 338
in town-site location.
in proportion to number of inhabitants 275
under preference 275
necessity for assessment-work after 134
of building-stone lands under placer mining laws 336
of coal-lands.
as to, generally 346
conflicting claims 348
one entry only allowed 348
pre-emption of.
as to, generally 347
to be presented within sixty days 347
requirements of 346
rights reserved 349
of mineral-oil lands, under placer laws.
as to, generally 337
what a sufficient discovery of oil 337
of petroleum, in Philippine Islands 398
of petroleum, under placer mining laws.
as to, generally 337
what a sufficient discovery of oil 337
of public lands, withdrawal of 379
of saline-lands, under placer mining laws 339
Equity jurisdiction.
determines form of action. See tit. **Form of action.**
as to, generally 199
In adverse proceedings 196
Equivalent of shaft. See tit. **Discovery-shaft.**
Errors.
and omissions in certificate of incorporation cured by amendment, in Nevada 610

Estates of deceased or incompetent miners and infants.
summary proceedings to sell.
as to, generally 311
mode of 311
in Idaho 312
in Nevada 312
optional contracts to sell 313
proceedings not subject to usual probate laws 314
Estoppel.
by deed to deny validity of location 223
of employee to assert interest in claim 70
Evidence. See tits. **Miners' rules and regulations; Oral testimony; Proof of rules and regulations; Testimony.**
aliunde patent, admissible when, in action to determine extralateral rights 241
as to discovery of mineral 83
burden of proof in action to establish forfeiture 149
documentary, of miners' rules and regulations 17
effect of record as, in Washington 700
failure to do assessment-work prima facie, of forfeiture 150
location-certificate admissible in 22
of imperfect underground discovery 84
of incorporation in Nevada 623
of indications which miners have successfully followed in district 84
of performance of annual labor, in Alaska 365
of possession sufficient to entitle to patent 335
on application for patent, may be taken by commissioner outside of land district 183
proof of annual labor in Idaho, effect as 587
receipt of mining recorder is prima facie, in Nevada 612
record as 131
record of forfeiture by co-owner as 537
Examination.
in proceedings before commissioner of general land-office, etc. 518
of mines by débris commission 379
on petition for hydraulic mining 375
Excavation.
development of placer claims in Idaho by 586
on one of group of claims. See tit. **Adjoining claims.**
on patented claim in group 138
to be made upon claims before location-notice 122
Excepted.
mineral lands are, in certain states 344
Excessive claim. See tit. **Extent, size, and shape of mining claim.**
through innocent mistake, effect of 93

Excessive size. See tit. **Extent, size, and shape of mining claim.**
Excuse.
for not performing annual labor or assessment-work..... 139
Executive committee. See tit. **Corporations.**
quorum, in Nevada 632
Executors.
stock held by, how to be voted, in Nevada..... 651
Exemption.
in Nevada, of stock held by non-residents..... 650
Existing rights. See tit. **Rights.**
Expenditure.
of money on tunnels credited as assessment-work 328
Expenses.
for common dumping-ground in hydraulic mining, allotment of 377
in hydraulic mining.
allotment of, for common dumping-ground 377
as to, generally 375
of appointment of deputy surveyors, in Philippine Islands... 399
Exploration.
lands subject to 25
of land grant by state, in Nevada 613
Extension.
of limits of town site 274
Extent of claim. See tit. **Extent, size, and shape of mining claim.**
Extent, size, and shape of mining claim.
as to, generally 91
Colorado statute regulating 91
excessive size.
effect of 92
excessive claim through innocent mistake 93
reformation of lines 93
strict accuracy in marking claim not required..... 94
Montana statute regulating 91
of placer, as to 92
of tunnel, as to 92
shape of claim.
bringing placer location within purview of statute..... 96
gulch placer claim 95
lode claim 94
parallelism is essential 95
placer claim on unsurveyed public land 95
side lines to be straight lines 95
Exterior lines.
claim not to extend beyond.
in North Dakota 684
in South Dakota 691
following trend beyond, in Nevada 602

Extra services.
in land-office, no fees, commissions, or rewards allowed for.. 491
Extralateral rights.
as to, generally 233
boundary lines as determining 239
conferring by patent 210, 211
governed by parallelism of lines.
as to, generally 247-252
establishing 259
in suit as to, evidence admissible..... 241
where location made in substantial conformity to statute..... 252
Failure to commence business.
forfeits charter in Nevada 648
Fairbanks district.
in Alaska 366
False entry.
penalty in Nevada for making, in corporation books..... 658
False statement.
publishing, by corporation, a misdemeanor in Nevada..... 657
False swearing.
penalty for, on application for purchase..... 356
Federal courts. See tit. **Jurisdiction of courts.**
Federal mining laws.
states exempted from 25
Federal statutes. See tits. **Alaska; California; Débris commission; Hawaii; Philippine Islands; Porto Rico.**
additional officers, power of President to provide, for land districts 343
adverse claim. See tit. **Adverse claim.**
costs on 332
findings by jury 332
oath of claimant, before whom made 332
proceedings on 331
affidavit of citizenship, before whom made 325
Agricultural Department, control over forest reserves..... 352
agricultural lands. See tit. **Agricultural lands.**
restoration of, to public domain 351
Alaska. See tit. **Alaska.**
application for purchase. See tit. **Application to purchase.**
penalty for false swearing, etc. 356
as to, generally 18
assessment required for oil claims. See tit. **Oil claims.**
as to, generally 327
assessment-work. See tit. **Assessment-work.**
co-owners not relieved from proportion of 329
bankruptcy. See tit. **Bankruptcy.**
laws of, applied to mining as well as other corporations.... 356

Federal statutes (continued).
clandestine entries, locator protected against 338
coal-lands. See tit. **Coal-lands.**
conflicting claims 348
entry of 346
only one entry allowed 348
pre-emption of.
as to, generally 347
to be presented within sixty days 347
reserved rights 349
conditions of sale made by local legislature 341
conflicting claims. See tits. **Adverse claims; Adverse proceedings.**
to coal-lands 348
conformity of placer claims to survey.
as to, generally 334
limit of claim 334, 335
maximum of placer locations 334
subdivisions of ten-acre tracts 334
control of forest reserves transferred to Agricultural Department 352
co-owners of claims not relieved from proportion of assessment-work 329
corporation, grant of lands to, not to include mineral lands.. 345
description of vein or lode claims. See tit. **Claims.**
on surveyed land 333
on unsurveyed land 333
discovery of oil, what a sufficient 337
duty of register and receiver of local land-office 354
egress of settlers from forest reservations..... 351
entry of building-stone lands under placer mining laws..... 336
evidence of possession, what to establish right to patent..... 335
existing rights 334
expenditure of money on tunnels. See tit. **Tunnels.**
as to, generally 328
forest reserves. See tit. **Forest reserves.**
as to, generally 353
control of, transferred to Agricultural Department..... 352
ingress and egress of settlers within 351
jurisdiction of Department of Interior and Department of Agriculture within 352
restoration to public domain 351
use of timber by settlers 351
when to be established 350
fraudulent entries, locator protected against 338
grant of lands to states or corporations not to include mineral lands 345

Federal statutes (continued).
homesteads. See tit. **Homesteads.**
subject to vested and accrued water rights 342
Indian reservations. See tits. **Indian reservations; Reservations.**
mineral lands upon 345
ingress of settlers to forest reservations 351
intersecting veins. See tits. **Intersecting veins; Veins.**
as to 341
jurisdiction over forest reserves.
of Department of Agriculture 352
of Department of Interior 352
land districts. See tit. **Land districts.**
additional, power of President to provide 343
power of President to provide additional land-officers for... 343
lands located and entered under mineral land laws, limits as to amount 350
legislature, conditions of sale imposed by local..... 341
length of mining claim upon veins or lodes..... 324
limit of amount of lands to be entered under mineral land laws 350
limit of placer claims 334, 335
limitations of suit to annul patents 359
local land-office, duty of register and receiver of..... 354
locator.
protected against fraudulent or clandestine entries..... 338
rights of possession and enjoyment 325
maximum of placer locations 334
mineral lands. See tit. **Mineral lands.**
additional land districts. See tit. **Land districts.**
excepted in certain cases 344
grant of lands to states or corporations not to include..... 345
how set apart as agricultural lands 343
in Alabama, disposal of, as agricultural lands 344
in Kansas, disposal of, as agricultural lands 344
in Missouri, disposal of, as agricultural lands..... 344
in which no valuable mines are discovered, open to homesteads 343
open to homesteads, where no valuable mines discovered.. 342
open to purchase by citizens 343
power of President to provide 343
reservation of 323
restoration of, to public domain 351
miners' rules and regulations must not conflict with 13
mode of establishing town site under 273
not conclusive on citizenship 170
oil, what a sufficient discovery of 337

Federal statutes (continued).
one entry only allowed on coal-lands 348
owners of tunnels, rights of 326
patents. See tit. **Patents.**
for mill sites 341
for mineral lands, how obtained 329
for non-mineral lands 341
limitation of suit to annul 359
proceedings for, to placer claim 336
reservation of right of way for ditches in 358
subject to vested and accrued water rights 342
what evidence of possession sufficient to establish right to.. 335
penalty for false swearing on application for purchase..... 356
pending applications, existing rights 334
petroleum, entry of, under placer mining laws.
as to, generally 337
locator protected against fraudulent or clandestine entries.. 338
mineral-oil lands, entry of, under placer mining laws..... 337
what not a sufficient discovery of oil 337
placer mining laws, building-stone lands may be entered under 358
pre-emption. See tit. **Pre-emption.**
of coal-lands. See "Coal-lands," this title.
subject to vested and accrued water rights 342
President may provide additional land districts and officers.. 343
proof of citizenship 324
provisions of statute not to affect certain rights..... 343
public domain. See tit. **Public domain.**
building-stone lands.
fact that land is more valuable for timber and stone, effect of 358
may be entered under placer mining laws..... 358
entry and patent 357
objections 357
publication.
of application to purchase 357
proofs of 357
restoration of agricultural or mineral lands to 351
receiver of local land-office, duty of 354
register of local land-office, duty of 354
regulations made by miners. See tit. **Miners' rules and regulations.**
as to, generally 326
removal of timber from forest reserves 353
reservation in patents for right of way for ditches 358
reservoir sites. See tit. **Reservoir sites.**
located or selected how 349
restoration of mineral or agricultural lands to public domain 351

Federal statutes (continued).
rights.
of owners of tunnels 326
provision of statute not to affect certain..... 343
reserved in coal-lands 349
rules and regulations of Secretary of Interior.
as to, generally 354
penalty for violation of 354
saline-lands. See tit. **Saline-lands.**
limit of one location to each person 339
to be located as placer claims 339
Utah salt-lands within state 339
savors somewhat of mere rules prescribed 22
soldiers and sailors in war with Spain.
notice of enlistment to be given 329
relieved from assessment-work 328
state statutes in subordination to 22
must be merely supplemental to 23
states, grants to, not to include mineral lands..... 345
stone-lands, sale of timber on 355
subdivisions of ten-acre tracts, minimum of placer locations.. 334
surveyor-general to appoint surveyors of mining claims, etc... 339
surveys, conformity of placer claim to 334
timber. See tit. **Timber.**
cutting of, for roasting ores 354
cutting of, for smelting purposes 354
in Black Hills reservation 353
in Colorado, citizens may fell and remove, from public domain for what purposes 353
in forest reserve, use of, by settlers 351
in Nevada, citizens may fell and remove, from public domain for what purposes 353
in the territories, citizens may fell and remove, from public domain for what purposes 353
removal of, from forest reserves 353
sale of, on stone-lands..... 355
timber-cutting. See tit. **Timber.**
for roasting ores 354
town sites. See tit. **Town sites.**
on mineral lands. See tit. **Mineral lands.**
authorized 349
restrictions 349
verification. See tit. **Verification.**
of affidavit 340
vested rights.
right of way for canals 342
to use of water for mining..... 342

Federal statutes (continued).
violation of statutes, or rules and regulations, penalty..... 354
water rights. See tit. **Water rights.**
granted for mining, etc., purposes. See tit. **Mines and mining.**
regulations of 354
in forest reserve 354
Fees.
and charges. See tit. **Charges and fees.**
for office-work and stationery in survey of mining claim... 488
statement of, in application for patent..... 720
for duplicate notices, in Nevada 611
for filing proof of improvements, in Alaska..... 366
for foreign corporations, in California..... 561
for recording certificate, in South Dakota 693
for recording duplicate notices, in Nevada..... 611
of recorders, in Nevada 610
of registers, receivers, and surveyors-general. See tits. **Receivers; Registers; Surveyors-general.**
declaratory statements 489
land-office regulations respecting 434-437
of land-office, deposit on application for survey 160
of secretary of state, in California 558
of surveyor-general 492
to resident agent, in Arizona 548
Fencing.
abandoned shafts, in California 552
Field-notes.
and preliminary plat to be sent to surveyor-general.
as to, generally 162, 163
to be verified 163
Filing plat.
of town site. See tit. **Town site.**
as to, generally..... 273
Final entry.
in application to purchase..... 174
register's certificate 175
Findings.
by court, in adverse proceedings..... 205
by jury, in adverse claim 332
by state court, conclusiveness upon Federal court..... 208
Fire-clay.
lands containing, may be appropriated as placer..... 48
First meeting. See tits. **Corporations; Directors.**
of corporation, in Nevada 627
to elect directors, in Nevada 627
Fissure. See tit. **Lode.**
to have form, and be well defined 40

Fixtures.
as to, in mines, generally 218
Colorado statutes 218
engine is, when 218
Flagstaff mine.
litigation in respect to.
as to, generally 19, 20
decisions show what 20
Flume.
right of way for, in Colorado, parol license 578
Following lode or vein on its dip. See tit. **Vein.**
adjoining agricultural land, following dip into 235
apex. See tit. **Apex.**
as to what constitutes 236
of lode within claim, doctrine as to following dip 236
practical rule as to ascertaining 237
within claim, doctrine as to following dip 236
boundary lines. See tit. **Boundary lines; Lines.**
as determining extralateral rights 239
fixing, by agreement 242
in case of overlapping claims 244
priority of location determines right in conflict of 240
projecting across senior location 241
where three claims are located simultaneously with overlapping lines 244
where two parties own in severalty overlapping claims 244
continuity of vein or lode.
as to, generally 237
test of 238
end lines. See tit. **End lines.**
as fixed by conveyance 253
establishment of, extralateral rights 233, 250, 259
fixing, by agreement 242, 243, 244
mining claim in shape of triangle 246
must be straight lines 253
not at right angles with side lines 253
parallelism of.
as to, generally 247
extralateral rights under 250
location made in substantial conformity to statute 252
location under act of 1866 247
location under act of 1872 247
side lines becoming 245
vein abruptly terminating before reaching 255
veins crossing and departing through side lines 253
extralateral rights determined by boundaries 239

Following vein or lode on its dip (continued).
fixing lines by agreement.
as to, generally 242
common end boundary between coterminous owners 243
in case of overlapping claims 244
general rule under act of 1866.
extralateral rights. See tit. **Extralateral rights.**
as to, generally 233
on patented claim 233
where claim located so that end lines cross lode..... 233
general rule under act of 1872.
as to, generally 234
possession of surface location, possession of veins, etc..... 234
identity of vein or lode 237
in case where three claims located simultaneously with overlapping lines 244
in case where two parties own in severalty overlapping claims 244
into adjoining agricultural land 235
lines. See "Side lines," this title.
lines of location. See "Boundary lines," this title.
patentee, rights of 260
priority of location determines right in case of conflicting boundaries 240
projecting lines across senior location 241
rights. See tits. **Mines and mining: Extralateral right.**
extralateral, determined by boundaries 239
priority determines in case of conflicting boundaries 240
side lines. See tits. **Lines; Side lines.**
as to what are 245
becoming end lines 245
end lines not at right angles with 253
mining claim in shape of triangle 246
parallelism of. See tit. **Parallelism.**
as to, generally 245
requirement of parallelism 245
vein departing and entering same side line 255
vein having apex outside of 258
extralateral rights. See tit. **Extralateral rights.**
as to, generally 233, 250, 259
establishment of 259
no right to tunnel 259
vein lying along common side line 255
veins crossing end lines and departing through 253
test of continuity 238
Force and arms. See tit. **Forfeiture.**

Foreign corporations.
agent of, in California 561
completion of location prevented by, not forfeiture 147
fees of, in California 561
in Nevada. See tit. **Nevada.**
must file certified copy of articles in California.
as to, generally 561
penalty for failure to file 562
to file legal copies of charters with secretary of state in Nevada 677
Forest reservations.
control of.
jurisdiction of Department of Agriculture 352
jurisdiction of Department of Interior 352
transferred to Agricultural Department 352
egress from, by settlers 351
ingress to, by settlers 351
mineral lands in, land-office regulations respecting 441
regulation of water rights granted for mining purposes in.... 354
removal of timber from.
Alaska forest reserves 353
as to, generally 353
Black Hills forest reserve 353
Idaho forest reserve 353
South Dakota forest reserve 353
restoration to public domain 351
transferred to Agricultural Department 352
use of timber by settlers 351
when to be established 350
Forfeiture.
actual, necessary to relocation 152
as to, in general 147
by co-owner. See tits. **Assessment-work; Co-owners.**
cannot be predicated upon failure to observe rules and regulations when 147
completing location prevented by force, fraud, etc., effect of.. 147
co-owner cannot take advantage of, when 148
distinction between, and "abandonment" 148
failure to do assessment-work.
as to, generally 148
prima facie evidence of 150
forfeiture notice, form of 768
in Alaska, for failure to do annual labor..... 365
of charter, in Nevada 648
of interest of co-owner, in Arizona. See tit. **Co-owners.**
payment of portion of assessment-work prevents, when..... 147
proof of publication of forfeiture-notice, form of 769

Forfeiture (continued).
record of, as evidence, in Arizona 537
resumption of work. See tit. **Resumption of work.**
burden of proof 149
effect of 148
relocation 149
Form of action.
in adverse proceedings. See tit. **Adverse proceedings.**
as to, generally 199
determined by state practice 199
in Alaska 200
law or equity determines 199
Formation.
of corporation in Nevada, how accomplished 621
Forms.
adverse claim 789
affidavit. See tit. **Affidavit.**
accompanying notice of location in Idaho 587
of annual labor. See tits. **Annual labor; Assessment-work.**
in California 771
in Colorado 579
in Nevada 773
in Utah 773
of assessment-work, in Arizona 534
Alaska. See tit. **Alaska.**
proof of annual labor in 770
statutory requirements 727
amended location-notice 761
annual assessment-work. See tit. **Assessment-work.**
proof of, in Washington 774
annual labor. See tit. **Annual labor; Assessment-work.**
answer in adverse 800
application for patent.
as to, generally 714
of coal-lands, in Alaska 471
application to purchase 722
application to United States surveyor-general for survey of mining claim 709
Arizona. See tit. **Arizona.**
notice of lode location 728
notice of placer location 729
proof of annual labor in 771
articles of incorporation. See tits. **Articles of incorporation; Corporations.**
in Arizona 807
in California 812
in Nevada 814

Forms (continued).
by-laws 816
California. See tit. **California.**
notice of location, no statutory requirement 731
proof of annual labor 771
Colorado. See tit. **Colorado.**
certificate of placer location to be recorded..... 734
first or preliminary notice for posting 731
notice of location of lode mining claim to be recorded 732
preliminary notice of placer claim for posting..... 733
proof of annual labor in 587, 772
complaint in support of adverse 795
forfeiture notice.
as to, generally 768
proof of publication of forfeiture notice 769
grub-stake contract 785
Idaho. See tit. **Idaho.**
discovery-notice for posting on lode claim 734
notice of location of lode claim 735
placer location notice 737
proof of annual labor in 579, 772
lease. See tit. **Lease.**
of lode mining claim 780
of oil claim 804
mill-site location 763
Montana. See tit. **Montana.**
certificate of location of lode mining claim to be recorded.. 738
notice of location of lode mining claim for posting..... 738
preliminary notice to be posted on placer claim 740
Nevada. See tit. **Nevada.**
certificate of location of placer claim to be recorded..... 744
location-certificate of lode claim to be recorded 741
notice of location for placer claim for posting 743
preliminary notice for posting on lode claim 741
proof of annual labor in 773
New Mexico. See tit. **New Mexico.**
location-notice of lode claim 745
North Dakota. See tit. **North Dakota.**
certificate of location of lode claim to be recorded 747
preliminary notice for posting on lode claim 747
notice. See tit. **Notice.**
for publication of enry of coal-lands in Alaska 462
of application for patent 711
of location of coal-lands in Alaska 470
of non-liability for labor or materials furnished 787
oil lease 804
option with privilege of working, etc. 776

Forms (continued).
order of publication of notice of application for patent..... 717
Oregon. See tit. **Oregon.**
certificate of lode location.
as to, generally 749
verifications 750
proof of annual labor. See tits. **Annual labor; Proof.**
in Alaska 770
in Arizona 771
in California 771
in Colorado 587, 772
in Idaho 579, 772, 787
in Nevada 773
in Utah 773
in Washington 774
in Wyoming 775
proof of posting notice and plat upon claim 713
proof of publication. See tit. **Proof.**
of forfeiture notice 769
of notice 718
proof that plat and notice remained posted on claim during time of publication 719
prospecting or grub-stake contract 785
publisher's agreement..... 717
quitclaim deed to mining claim 783
resolution adopted by corporation authorizing individuals to represent company in patent proceedings 710
South Dakota. See tit. **South Dakota.**
as to forms in 751
certificate of register for posting 751
statement of fees and charges 720
subpœna in proceedings in district land-offices, etc..... 524
table of measurements to determine surface area of mining claims, mill sites, etc. 767
tunnel site. See tit. **Tunnel-site.**
location notice or certificate of, for posting on the ground and for recording 765
United States patent. See tit. **Patent.**
for lode claim 723
Utah. See tit. **Utah.**
certificate of location for lode claim 752
placer location 753
proof of annual labor in 773
Washington. See tit. **Washington.**
affidavit of location-work on placer claim 757
notice for posting. See tits. **Notice; Posting.**
on ground of placer claim 756
on lode claim 754

Forms. Washington (continued).
notice of location of lode claim for recording 755
proof of annual assessment-work 774
Wyoming. See tit. **Wyoming.**
certificate of location of lode claim 758
preliminary notice for posting 758
proof of labor 775
Fractional claims. See tit. **Claims.**
in Philippine Islands 390
Franchise.
manner of sale of, in Nevada 648
sale of, in Nevada 647, 668
Fraudulent account. See tits. **Account; Corporations.**
keeping, by corporation, is a crime, in Nevada 658
Fraudulent entry. See tit. **Entry.**
locator protected against 338
Future discovery. See tit. **Discovery.**
of mineral in town-site location 279
General custom. See tit. **Miners' rules and regulations.**
General land-office. See tits. **Land-office; Rules of practice in district land-offices, etc.**
proceedings before commissioner of. See tit. **Commissioner.**
appeals to 509-512
arguments 508
as to, generally 508
attorneys before 512
certiorari, writ of, petition for, to contain what 514
decisions of 513
examination 508
rehearing 508
review 508
writ of certiorari, petition to contain what..... 514
Government land.
discovery of mineral upon 6
Granite.
lands containing granite-quarries may be located as placer... 48
Grants of lands.
to corporations, not to include mineral lands 345
to states, not to include mineral lands 345
Grants to public works.
mineral lands reserved from, in Philippine Islands 405
Ground.
affected in adverse proceedings 205
Groups of claims. See tits. **Adjoining claims; Application for patent; Assessment-work; Improvements.**
improvements on 178
in oil claims limited to five..... 139

Grub-stake contracts.
cannot claim interest, where unable to carry out contract.... 305
consideration for 392
dissolution of, by mutual consent..... 305
enforcement of 302
form of 785
in Idaho 301
in Nevada 301
in Oregon 302
liability for debts 305
must use reasonable diligence in prospecting 304
not necessarily in writing 300
parties to.
are qualified partners 303
are tenants in common 302
are trustees for each other 303
one partner may not locate for his own benefit..... 304
partner may not locate for his own benefit..... 304
peculiar to mining countries 300
qualified partnership 303
resulting trusts 305
tenants in common, parties are..... 302
to be in writing, in Oregon 686
to be recorded, in Nevada 616
when no time limit fixed 304
Gulch placer claim. See tit. **Placer claim.**
shape of 95
Hawaiian Islands.
mines and mining in 318
Hearings.
on petitions for hydraulic mining 375
to determine character of lands. See tit. **Character of lands.**
Heirs.
of claimant, adverse proceedings by 191
of deceased applicant may make final proof 179
of deceased claimant, parties in adverse proceedings..... 197
Holiday.
filing adverse claim on 193
Homesteads. See tit. **Public domain.**
in mineral lands on which valuable mines not discovered.... 342
subject to vested and accrued water rights 342
Hydraulic mines.
advance by mine-owners 380
débris fund created 380
Hydraulic mining. See tit. **Débris commission.**
authority to commence, revoked or reduced by débris commission 378

Hydraulic mining (continued).
definition of 373
jurisdiction over, by débris commission..... 371
permission to commence.
as to, generally 376
conditions imposed on 377
wilful injury to works, penalty 379
without impounding-works 375
Idaho.
affidavit. See tit. **Affidavit.**
accompanying filing of notice 586
of annual labor. See tit. **Annual labor.**
as to form 579, 772
contents of 587
effect of, as evidence 587
amended locations 588
citizens of, may fell and remove timber from public domain.. 353
deputy mining recorder.
as to, generally 588
duty to transmit notices to recorder 588
other duties 589
discovery-notice for posting on lode claim, form of 734
forest reserve of, removal of timber from..... 353
grub-stake contract in 301
location, amended 588
mining claims in.
abandoned claim, relocating 585
boundaries of lode claim, marking 584
marking boundaries of lode claim 584
monument at point of discovery 584
necessity of discovery-shaft.
as to, generally 585
time when must be sunk 585
notice of location.
as to, generally 584
must claim but one location 586
placer claims. See tit. **Placer claims.**
development excavation 586
marking boundaries of 586
notice of location 586
record of location 586
recording notice of location 585
relocation.
as to, generally 585
of abandoned claim 585
who may take and hold 583
width of 584

Idaho (continued).
notice. See tit. **Notice.**
affidavit accompanying filing of 586
of location of lode claim, form of 735
of placer location, form of 737
placer location notice, form of 737
presumption in, of continuance of miners' rules and regulations 16
proof of annual labor.
as to, generally 587
contents of affidavit 587
effect of, as evidence 587
right to mine separate from ownership of surface when 589
statute regulating recordation of location-notices..... 125
summary proceedings in, to sell estates of deceased or incompetent miners and infants 312
who may take and hold mining claims in 583
Idaho statute. See tit. **Idaho.**
regulating discovery of minerals 80
Identity.
of vein or lode 237
test of 238
Impounding-works. See tit. **Débris commission; Hydraulic mining.**
hydraulic mining without 375
Improvements.
and annual labor in Philippine Islands 392
as to what constitutes, to satisfy statute 134
by prior locator, not available to relocator as assets 157
certificate of 170
matter of 163
on group of claims 178
or labor, aggregate expenditure on.
as to, generally 137
by owner of adjoining claims. See tit. **Assessment-work.**
as to, generally 137
claims must be contiguous..... 139
excavation upon one of group 138
on patented claim 138
situation disclosed in most of decided cases..... 138
pass by relocation when 157
stamp-mill as a..... 163
surveyor-general's certificate must show what 170
what constitute 163
"In place." See tit. **Lode.**
meaning of words 41
Incompetent miners. See tit. **Estates of deceased or incompetent miners and infants.**

Incorporation. See tit. **Corporation.**
evidence of, in Nevada 623
need not be proven, in Nevada 662
Incorporators. See tit. **Corporation.**
may amend certificate of incorporation before payment of capital, in Nevada 639
Indian reservations. See tit. **Reservations.**
Cherokee Outlet, Federal mining laws not applicable to..... 33
claim located in, in adverse proceedings 204
mineral lands in 345
not subject to location.
as to, generally 29
attempt to locate on Indian lands 30
Infants. See tit. **Estates of deceased or incompetent miners and infants.**
may make location of mining claim 71
Information. See tit. **Record information.**
and belief, verification of location-notice upon..... 126
for creditor or stockholder, in Nevada 657
Ingress. See tit. **Reservations.**
by settlers to forest reserves 351
Inheritance.
of mining claim by alien 69
Innocent mistake.
in making excessive claim 93
Inspection.
of books of corporation, right of, may be given to creditors, in Nevada 626
of tunnel through other claims, in Colorado 574
Instruments.
what to be recorded, in Alaska 363
where to be recorded, in Alaska 363
Intention to contest. See tits. **Adverse; Adverse proceedings.**
as to, generally..... 494
Interest.
in grub-stake contract, not enforceable when..... 305
Interrogatories.
depositions on, in contest cases 499
"Intersect."
meaning of. See tit. **Crossing or intersecting veins or lodes.**
not synonymous with "cross" 266
Intersecting.
veins or lodes. See tit. **Crossing or intersecting veins or lodes.**
Irrigation.
lands reclaimed by, not subject to exploration and location of claim 35

Issuance of patent. See tit. **Patent.**
does not determine time of discovery 77
Joint owner.
rule as to effect of failure to adverse not applicable to..... 194
"Judge of county court."
meaning of, in town-site location law 274
Judgment. See tits. **Decision; Land department.**
in adverse proceedings.
amount in controversy as affecting review 206
effect of judgment 206
findings by court 205
ground affected by 205
proceedings after judgment 206
Juneau, Alaska.
registers and receivers at, land-office regulations respecting.
as to, generally 472-474
supplemental regulations and instructions.
additional supplemental regulations 477
as to, generally 474-476
Jurisdiction.
of courts. See tit. **Courts.**
amount in controversy as affecting 206
in adverse proceeedings.
as to, generally 194
of Federal courts.
amount in controversy as affecting 206
as to, generally 194
of state courts 194
subject-matter of 195
of Department.
of Agriculture within forest reserves..... 352
of Interior within forest reserves 352
of land department on application for patent 183
of land-office in issuing patent 216
Jury.
findings by, in adverse claim 332
right to trial by, in adverse proceedings 202
Kansas.
disposal of mineral lands as agricultural lands in 344
Knowledge of prior discovery. See tit. **Discovery.**
not sufficient discovery for valid location 75
Labor. See tits. **Annual labor; Assessment-work.**
by whom to be done 139
excuse for not performing 139
in case of co-owner. See tit. **Co-owners.**
in case of group of claims. See tit. **Assessment-work.**
not question for land department 110

Labor (continued).
on several claims.
aggregate expenditure of 137
as to, generally 137
excavation made upon one of group 138
on patented claim 138
where several owners of adjoining claims 137
outside of claim 136
performance of, issuance of patent 140
proof of 140
stock may be issued for, in Nevada 649
time in which must be performed, in South Dakota..... 691
valuation of 136
what constitutes 134
Land.
adjacent, use of, for development purposes. See tit. **Adjacent land.**
as to, generally 28
appropriated as non-mineral not subject to entry 29
cancelation of entry of, does not restore to public domain.... 28
character of, as affecting patent 215
development purposes, use of adjacent, for 28
entry, cancelation of, does not restore to public domain 28
grant to states, effect of 32
Indian reservation, not subject to location.
as to, generally 29
attempt to locate upon 30
land not subject to appropriation.
Indian reservation.
as to, generally 29
attempted location upon Indian land 30
failure to record location after extinguishment of Indian title .....30, n.
grants to state 32
lands reclaimed by irrigation 35
Mexican land grants 33
military reservations 29
mineral land. See tit. **Mineral land.**
railroad grants 31
reservoir sites 29
saline-lands. See tit. **Saline-lands.**
tide-lands 34
town sites 33
where appropriated as non-mineral 29
lands not subject to appropriation at time of location.
as to, generally 27
cancelation of entry does not restore land to public domain 28

Land (continued).
located and entered under mineral land laws, limit as to amount 350
mineral land. See tit. **Mineral land.**
must be unappropriated and unoccupied 25
Nevada act of 1867 33
non-mineral.
and non-contiguous only to be used for mill sites 61
appropriated as not subject to location 29
not subject to appropriation at time of location 27
states excepted from operation of Federal mining laws 25
subject to exploration and appropriation.
as to, generally 25
land must be unappropriated and unoccupied 25
location. See tit. **Location.**
"unappropriated," meaning of 26, 27
unappropriated only subject to location 25
unoccupied only subject to location 25
"unoccupied," meaning of 26, 27
using adjacent land for development purposes 28
valid location, requisites of 26
Land department.
conclusiveness of decision of 184
evidence may be taken before commissioner outside of district 183
jurisdiction of, on application for patent 183
Land districts.
additional land officers for, power of President to provide 343
claim in two, patent for 173
commissioner outside of, may take evidence for application for patent 183
establishment of, in Philippine Islands 402
Land grants.
exploration of, and appropriation by state 613
to be selected by state 613
Land-office rules and regulations. See tit. **Rules of practice in district land-offices, etc.**
adverse claims 432-434
appointment of deputies for survey of mining claims.
as to, generally 434
charges for surveys 434
fees of registers and receivers on 434
coal-lands. See tit. **Coal-lands.**
action required by special agents 475-477
application to purchase.
affidavit 479
as to, generally 478
are mineral, within meaning of law 478

Land-office rules and regulations. Coal-lands (continued).
in Alaska.
application for patent 470
as to, generally 464-472
notice of location 470
instructions to registers and receivers at Juneau, Alaska. 472-474
lands not coal-lands 475
notice for publication of coal entry 462
regulations generally 455-464
supplemental regulations for 474, 478
deputies, appointment of, for survey of mining claims.
as to, generally 434
charges for survey and publications 434
fees of registers and receivers on 434
district of Alaska 441
hearing to determine character of land 437-441
lode claims 408-412
mill sites 428, 429
mineral lands within forest reserves 441
mining claims, appointment of deputies for survey of.
as to, generally 434
charges for publications 434
charges for survey 434
fees of registers and receivers on 434
nature and extent of mining claims 408
placer claims.
as to, generally 413, 414, 415, 416
amendments to rules as to 414
possessory right 431
procedure to obtain patent to mineral lands.
amendment to rules 419, 420
as to, generally 417
lode claim 417, 418, 420-426
placer claims.
as to, generally 426-428
citizenship 429
necessity of proper proof 430
recognition of agent and attorneys, regulations as to 479-483
regulations under saline act 416, 417
saline act, regulations under 416, 417
surveys of mining claims.
amendment to rules 449
general provisions 442-444
surveys, how made 444-449, 450-454
Land-offices. See tits. **District land-offices; Rules of practice in district land-offices, etc.**
extra services, no fees, commissions, or rewards allowed for .. 491

Land-offices (continued).
fees of, deposit on application for survey 160
jurisdiction of, in issuing patent 216
local, duty of register and receiver of 354
location of mine by employees of 71
regularity of proceedings in, and issuing patent 216
"Lands chiefly valuable for stone."
location of, as placer 48
Lapse of time as affecting a valid location. See tit. **Location.**
Law and fact.
what constitutes use of land for mill site, etc., is a question of 65
Law or equity.
determines nature and form of action in adverse proceedings.. 199
in Alaska 200
Lease.
form of, for lode mining claim 780
of oil claim, form of 804
"Ledge."
synonymous with "lode" or "vein" 36
"Ledge-matter." See tit. **Lode.**
requisites of 40
Ledges.
right to, conveyed by possession of surface of mining location 234
Legal process.
service of.
on corporation, in Nevada 663
foreign corporations, in Nevada 679
Legislative sanction.
of miners' rules and regulations 11
Legislature.
local, may fix conditions of sale 341
Length.
of lode claim.
in Colorado 575
in North Dakota 683
in South Dakota 688
Lessee.
may make relocation when 156
Liability.
of corporation not affected by merger, in Nevada..... 646
License.
to extend tunnel of another for development-work in own property, rights of discovery..... 60
License tax.
in California, for part of year 570
Lien.
of employee of a corporation, in Nevada..... 662

Lime.
stone suitable for making, land containing, subject to location as placer 49
Limit.
of claims in Philippine Islands 392
of placer claim. See tit. **Placer Claim.**
as to, generally 334, 335
of town site, extending 274
Limitations.
of suits to annul patents 359
Lines.
of claim. See tits. **Boundaries; End lines; Extent, size, and shape of mining claim; Mining claims; Parallelism; Side lines.**
course controlled by stakes 117
end lines. See tit. **End lines.**
extralateral rights determined by. See tit. **Extralateral rights.**
fixing, by agreement.
as to, generally 242
in case of overlapping claims 244
in case three claims located simultaneously with overlapping lines 244
in case two parties owning, in severalty, overlapping claims 244
parallelism of 245, 247
projecting across senior location 241
side lines. See tit. **Side lines.**
strict accuracy in marking not required 94
Littoral proprietor.
rights of 35
Local regulations. See tit. **Miners' rules and regulations.**
distinction between, and general customs 9
Local rules. See tit. **Miners' rules and regulations.**
giving to discoverer possessory rights 19
Local statutes. See tit. **Statutes.**
governing recording of location.
as to, generally 121
in Oregon 121
regulating the marking of boundaries to claims.
as to, generally 106
Colorado statute 106
Montana statute 107
Oregon statute 107
'Located." See tit. **Location.**
rights of parties 21

Locating claim.
in North Dakota.
abandoned claims. See tit. **Abandoned claims.**
by discovery-shaft 684
equivalent of discovery-shaft 684
in South Dakota, manner of 690
on town site 33
Location. See tits. **Amended location; Extent, size, and shape of mining claim; Notice of location; Placer claims; Record of location.**
actual possession need not be maintained 7
agent may locate.
as to, generally 69
estoppel of employee to assert interest 70
one in the employ of owner of mining claim, right to locate 69
ratification by principal.
as to, generally 70
proof of 70
aliens.
act of Congress of May, 1898 68
as to, generally 67
inheritance by 69
may hold and transfer 68
may make 68
modern doctrine 68
where a location has been made by, subsequently becoming citizen 68
amended, form of 761
certificate of.
amended in Washington 697
to be recorded.
as to, generally 688
fee for recording 693
to contain but one claim.
in North Dakota 684
in South Dakota 693
conditions prescribed in Oregon for 23
corporations may locate 70
defects in records do not void, when 128
definition of 4
discovery of minerals requisite to ..... 26, 29, n.
distinction between, and recording 120
does not, of itself, amount to an appropriation of land 45
effect of a valid 7
employees. See tit. **Agent.**
of general land-office, right to locate 71

Location (continued).
estoppel to deny validity of, by deed 223
forfeiture of. See tit. **Forfeiture.**
for tunnel site. See tit. **Tunnel site.**
heretofore made in Montana valid 595
in Arizona 531
in Colorado.
discovery-shaft 576
includes what 577
manner of 576
posting notice of location 576
includes what, in Nevada 602
infants may locate 71
in general 66
kinds of.
as to, generally 4
"lode locations" 4
lands not subject to. See tit. **Lands.**
as to, generally 27
lands subject to. See tit. **Lands.**
as to, generally 25
mill-site locations. See tit. **Mill-sites.**
"placer locations" 4
"tunnel locations" 4
lapse of time as affecting a valid 7
length of lode in South Dakota 688
"location."
identical with "mining interests" when 5
used interchangeably with "mining claim" 5
what is a 5
lode, mining rights in 225
made in substantial conformity to statute regarding end lines 252
mineral, founded on actual discovery 7
necessity of a valid 5
non-mineral lands not subject to. See tit. **Non-mineral lands.**
notice of. See tit. **Notice of location.**
in Idaho, must claim but one location 586
in New Mexico. See tit. **New Mexico.**
of mill site, in Nevada, contents of 606
of abandoned claim. See tits. **Abandonment; Relocation.**
in Arizona 535
of claim on town site 33
of mill site.
in Nevada.
is void when 607
recording 607
of mining claims, in Montana 590

Location (continued).
of placer claims, in Nevada. See tit. **Placer claims.**
of salt-lands, in Nevada 609
of tunnel site, size and extent 57
on unsurveyed lands, application for patent 168
possession of surface of mining claim conveys right to vein, etc. 234
record of, after extinguishment of Indian title .....30, n.
requisite.
of, in South Dakota 690
to a valid 26
size of claims in South Dakota 688
subject to railroad right of way 7
time to investigate discovery before 77
unappropriated lands only subject to 25
unoccupied land only subject to 25
valid, effect of 7
what constitutes a 4
who may make.
as to, generally 66
coal-lands 67
width of lode, in South Dakota 688
Location-certificate. See tit. **Location.**
admissible in evidence 22
amendment of.
as to, generally 130
in Colorado 130
in Montana 130
as evidence 22
in Wyoming. See tit. **Wyoming.**
contents of placer 703
recording 702
void when 703
of lode claim to be recorded.
in Montana, form of 738
in Nevada, form of 741
of placer claim.
in Colorado 572
contents of 572
time of recording 572
must contain what, in Nevada 606
recording, in Nevada 606
time to file, in Colorado 575
void when 576
what shall contain 575
Location lines.
in Philippine Islands 389

Location-notice. See tit. **Notice of location.**
Colorado rule 123
excavations upon claim before 122
false dating forbidden in Nevada 615
of lode mining claim for posting, in Montana, form of..... 738
penalty for false dating, in Nevada 616
to be recorded, in Nevada 601
what must contain, in Nevada 601
Wyoming rule 123
Location-stakes.
at corners of claim 103
Location-work.
affidavit of, on placer claim in Washington, form of..... 757
in Oregon, affidavit of 686
time in which must be done, in North Dakota..... 684
what constitutes, in Nevada 600
Locator.
possessory rights of 217
protected against fraudulent or clandestine entries 338
rights of.
by long-continued possession 6
possession and enjoyment 325
several, right of priority 104
to be given receipt by mining recorder, in Nevada 612
who may be, in Nevada 599
Locus.
variance of, in patent 215
Lode. See tits. **Following lode or vein in its dip; Lode claim; Vein.**
"along the vein," meaning of 42
"contact," defined 41
continuity of.
as to, generally 237
test of 238
"country," meaning of 42
"country-rock," meaning of 42
crossing or intersecting. See tit. **Crossing or intersecting veins or lodes.**
"débris," meaning of 41
definition of.
as to, generally 36, 37, 39
as used in Washington 697
description of.
on surveyed lands 333
on unsurveyed lands 333

Lode (continued).
discovery, notice of 78
excluded from placer when 177
existence of, issues touched 37
fissures to have form and be well defined 40
following its course or strike, limited by boundary line of claim 231
identity of 237
"in place," meaning of 41, 42
included in placer when 177
"ledge-matter," as to 40
"ledge-mattter," defined 40
length of, in South Dakota 688
length of mining claim along 324
meaning of, as used in acts of Congress 37
metalliferous rock in place and in fissure 41
placer location not included 227
right to, conveyed by possession of surface of mining location 234
separate and distinct 40
synonymous with "vein" or "ledge" 36
"the contact" 41
"tumble-stuff," meaning of 41
valid location of a 36
valid location of, as to 37
various definitions of 39
width of, in South Dakota 688
within placer conveyed by placer patent 211
Lode claim.
abandoned, relocation, in Nevada 602
"along the vein" 42
and placer claim within same area.
as to, generally 51
applicant for placer chargeable with notice 51
applicant may not go upon prior valid placer to locate 52
as to what constitutes known vein or lode.
as to, generally 52, 54
location not necessary 54
mere belief not based upon discovery not sufficient 53
mere outcroppings not sufficient 53
time at which vein must be known 54
vein or lode must be clearly ascertained 52
as to, in general 36
certificate of, in Oregon, form of 749
certificate of location of, in Utah, form of 752
certificate of location of, in Wyoming, form of 758
certificate of location of, to be recorded, in Montana, form of. 738

Lode claim (continued).
certificate of location of, to be recorded, in North Dakota, form of 747
"contact," the 41
contiguity of, defined 61
"country," as to meaning of 42
"country-rock," as to what is 42
"débris," as to 41
definition of lode 36, 37, 39
distinction between, and placer claim in patents 211
fissure to have form and be well defined 40
following trend beyond exterior lines, in Nevada 602
for mill site, form of 763
in Arizona, form of notice 728
in Colorado.
adit will hold lode 577
apex. See tit. **Apex.**
as to, generally 577
cannot follow trend beyond exterior lines 577
boundaries. See tit. **Boundary lines.**
manner of marking 576
marking 576
crossing, rights of parties 574
ditch, right of way for, parol license 578
end lines 577
flume, right of way for, parol license 578
length of 575
location-certificate void when 576
location includes what 577
manner of locating, posting notice 576
manner of location, discovery-shaft 576
marking boundaries 576
open crosscut, tunnel, or adit will hold lode 577
parol license for right of way for ditch, etc. 578
posting notice of location 576
right of way for ditch, flume, etc.
as to, generally 578
parol license 578
side lines 577
time for recording location-certificate 575
time to sink discovery-shaft 577
tunnel will hold lode 577
uniting, rights of parties 574
what location-certificate shall contain 575
width of, exceptions 575
in Idaho. See tit. **Idaho.**
discovery-notice for posting, form of 734
marking boundaries of 584

Lode claim (continued).
in North Dakota. See tit. **North Dakota.**
boundaries of, marking 684
certificates of.
amended 684
construed to contain what 684
may be void when 683
to contain but one location 684
discovery-shaft on.
as to, generally 684
equivalent of discovery-shaft 684
length of 683
location-work, time in which must be done 684
manner of locating 684
record of 683
width of 683
issue as to existence of lode or vein 37
land-office regulations respecting 408-412
lease for, form of 780
" ledge-matter," as to what constitutes 40
location-certificate of, to be recorded, in Nevada, form of 741
location-notice of, in New Mexico, form of 745
metalliferous rock in place 41
mining rights in 225
notice of location of.
for posting, in Montana, form of 737
for recording, in Washington, form of 755
in Idaho, form of 735
in Wyoming 702
notice for posting on, in Washington, form of 754
of lode claim, in New Mexico, form of 745
parallelism essential 95
partition of. See tit. **Partition.**
patented placer conflicting with 213
preliminary notice for posting on.
in North Dakota, form of 747
in Nevada, form of 741
purchaser of, from prior locator, rights of 227
right of way for water to, in Colorado 573
separate and distinct lode 40
shape of 94
side lines of 95
strike or course 42
" tumble-stuff," as to 41
valid location of 37
Lost certificates.
as to, in Nevada 652
court proceedings to obtain new certificates 652

Marble.
deposits, lands valuable for, may be located as placer 48
lands valuable for, may be located as placer 48
Marking. See tit. **Boundary lines.**
of claims, in the Philippine Islands 388
strict accuracy not required 94
Marking boundaries. See tit. **Boundary lines.**
California doctrine 108
of claims, obliterating 108
priority in 115
Married women.
transfer of stock in corporation by 634
Measurements.
in Philippine Islands, reduced to metric system 386
to determine surface area of mining claims, mill sites, etc., table of 767
Mechanic's lien.
on mines and mining claims 318
Meetings.
held by consent without notice, in Nevada 675
Meetings of directors. See tit. **Directors.**
quorum, in Nevada 632
Meetings of stockholders. See tit. **Corporations.**
in Nevada 628
Member.
of mining partnership. See tit. **Mining partnership.**
may deal with it for his own benefit 308
powers of, limited 310
Merger.
liability on 646
of corporations, in Nevada 643
payment of dissatisfied stockholders 645
Metalliferous deposits. See tit. **Lode.**
no distinction between, and non-metalliferous 228
Metalliferous rock. See tit. **Lode.**
in place and in fissure 41
Method.
study of, by California débris commission 372
Metric system.
used in Philippine Islands 386
Mexican land grants.
not open to location of claim 33
Mileage.
in lieu of traveling expenses for débris commission 384
Military reservation. See tit. **Reservations.**
not subject to location 29

Mill sites.
claimant, adverse proceedings by 190
contiguity of vein or lode claim, defined 61
district rule 61
form for location of 763
in Alaska 62
in general 61
in Montana 593
in Nevada 606
land must be non-mineral and non-contiguous..... 61
location of, void when 607
marking boundaries of. See tits. **Boundary lines; Markings; Marking boundaries; Monuments.**
as to, generally 607
milling purposes, what constitutes 63
must be used for mining or milling purposes.
as to, generally 62
mining purposes, what constitutes 63
what constitutes mining or milling purposes 63
non-contiguous, land must be..... 61
non-mineral, land must be 61
notice of location, what must contain 606
number of mill sites 64
ownership of mine not necessary 62
patents for 178, 341
record of location 607
state statute 61
table of measurements to determine surface area of..... 767
territorial statute 61
what constitutes use of land as a mill site, question of law and fact 65
Milling purposes.
mill site must be used for 62
what constitutes 63
Mine. See tits. **Mines and mining; Mining rights.**
advances to débris fund 380
allotment of expenses among, for common dumping-ground.. 377
as property. See tit. **Mines and mining claims.**
as to what is, in town-site location law 277
definition of 1
examination of, by débris commission 379
mechanic's lien on 318
ownership of, not necessary to mill site 62
Mineral.
coal-lands in Alaska are within statute 478
definition of 2

Mineral (continued).
discovery of.
by trespasser without color of title 6
in tunnel 57
relocator not a 152
upon government land 6
Mineral application.
adverse claims 489
as to, generally 489
commissions or rewards not allowed when 491
diagrams and plats 490
fee for 489
no fees required when 491
of surveyors-general, for certified copies of plats and records 492
plats. See tit. **Plats and diagrams.**
and diagrams 490
certified copies of, by surveyors-general, fees for..... 492
record information 490
records. See tit. **Records.**
certified copies of, by surveyors-general, fees for 492
transcripts of 490
reducing testimony to writing 489
rewards or commissions not allowed when 491
stone-land applications 489
timber-land applications 489
transcripts from records 490
Mineral claims. See tit. **Claims.**
abandonment, in Philippine Islands 392
application to purchase.
in Philippine Islands.
affidavit 389
as to, generally 389
citizenship, proof of, in Philippine Islands..... 392
demarcation.
in Philippine Islands.
as to, generally 387
difficult 391
difficult demarcations, in Philippine Islands 391
disputes as to, in Philippine Islands 391
fractional claims.
in Philippine Islands.
as to, generally 390
declaration 390
description of 390
sketch of plan of 390
in Philippine Islands.
limit of claims 392

Mineral claims. In Philippine Islands (continued).
locating 387
location lines 389
marking lines of claims 388
mining regulations. See tit. **Mining regulations.**
prior claims not prejudiced 389
proof of citizenship 392
recording 391
regulations of 387
removal of posts 389
size of 389
surveys 388
Mineral deposits.
definition of 2
on government land, open to exploration 25
prospector may locate, in Nevada, how 614
Mineral districts.
citizens of, may fell and remove timber from public domain.. 353
Mineral land.
adverse claim. See tits. **Adverse claim; Adverse proceedings.**
assessment. See tit. **Assessment-work.**
co-owners not relieved from proportion of 329
expenditure of money on tunnels 328
required, on oil claims. See tit. **Oil claims.**
as to, generally 328
soldiers and sailors in war with Spain not required to perform.
as to, generally 328
notice of enlistment to be given 329
building-stone lands. See tit. **Building-stone.**
clandestine entry, locator protected against 338
coal-lands. See tit. **Coal-lands.**
condition of sale of, made by local legislature 341
conflicting claims. See tits. **Adverse claims; Adverse proceedings.**
definition of 3
deposits sufficient to bring within exception to railroad grant 32
description of lode or vein.
on surveyed lands 333
on unsurveyed lands 333
evidence of possession to establish right to patent 335
fraudulent entry, locator protected against..... 338
in Alabama, disposal of, as agricultural lands 344
in certain states excepted 344
in forest reserve. See tit. **Forest reservations.**
land-office regulations respecting 441
in Indian reservation. See tit. **Indian reservations.**

Mineral land (continued).
in Kansas, disposal of, as agricultural lands 344
in Missouri, disposal of, as agricultural lands 344
in Philippine Islands. See tit. **Philippine Islands.**
in which no valuable mines discovered, open to homesteads.. 342
homesteads on, allowed when 343
how set apart 343
lands located under, limit of amount 350
length of mining claim upon veins or lodes 324
locator's right of possession and enjoyment 325
not to be included in grants of lands to states and corporations 245
oil-lands as. See tit. **Mineral-oil lands.**
one entry only allowed when 348
open to purchase by citizens 325
patents for. See tit. **Patents.**
how obtained 329
placer claims. See tit. **Placer claims.**
conformity of, to surveys 334
limit of 334, 335
subdivisions of ten-acre tracts, maximum of location 334
pre-emption of. See tits. **Coal-lands; Pre-emption.**
provisions of statute not to affect certain rights 343
regulations made by miners 326
reservation of 323
reserved rights 349
reservoir sites located on 349
restoration of, to public domain 351
rights.
of locators to possession and enjoyment 325
of tunnel-owners 326
saline-lands. See tit. **Saline-lands.**
state disclaiming interest in, in Nevada 613
suit to annul patent for, limitation of 359
survey of. See tits. **Survey; Surveyor; Surveyor-general.**
timber on. See tit. **Timber.**
town sites authorized on.
as to, generally 349
restrictions 349
unappropriated, abandoned claims deemed, in Oregon 687
vested rights to use of water. See tits. **Vested rights; Water rights.**
what is, within act of Congress 31
Mineral-land laws.
lands located under, limit as to amount 350
Mineral location. See tit. **Location.**
founded upon actual discovery of mineral deposit 7

Mineral-oil lands.
entry under placer mining laws.
as to, generally 337
what not a sufficient discovery of oil 337
Mineral rock in place.
constitutes valid discovery when 78, 79, 80
evidence as to.
generally 83
imperfect underground discovery 84
of indications which miners have successfully followed in district 84
Idaho statute 80
in placer claims 80
mere surface indication not sufficient 79
question of fact 83
sufficiency as affected by character of contestants 81
"Minerals."
definition of 2
Miners. See tits. **Estates of deceased or incompetent miners and infants; Miners' rules and regulations.**
owner of land may demand security from, in South Dakota... 691
Miners' regulations. See tit. **Miners' rules and regulations.**
as to, generally 326
Miners' rules and regulations. See tit. **Customs.**
as to, generally 8
as to supreme law prior to the passing of Federal statutes.
as to, generally 9
force and effect of 9
averment of, not necessary 17
California doctrine respecting 14
conflict with statute law, notable instances.
as to, generally 13
California doctrine respecting 14
construction of 17
distinction between general customs and local regulations.... 9
evidence of.
as to, generally 16
best evidence of 16
documentary evidence of 17
parol evidence of 17
presumption of continuance.
as to, generally 16
in Idaho 16
proofs must be made 16
written local mining law, how introduced 17
forfeiture cannot be predicated upon failure to observe, when 147

Miners' rules and regulations (continued).
in Alaska 363
legislative sanction and recognition of 11
must be complied with.
as to, generally 15
compliance will be presumed when 15
penalty for non-compliance 15
substantial compliance sufficient when 15
must be uniform 13
must not be fluctuating 13
must not conflict with statute law 13
notable instances of conflict with statute law 13
organization of mining districts 10
penalty for non-compliance with 15
presumption of continuance of.
as to, generally 16
in Idaho 16
proof of 16
regarding notice of location.
as to, generally 111
requiring posting of notice in particular way 112
regarding the markings of boundaries to claims 105
regularity of enactment 12
requisites of 12
subject-matter of 12
Mines and mining. See tits. **Mining claims; Mining rights.**
construction of transfer 222
dower rights in 219
eminent domain in, conflict of authorities 285
estoppel to deny validity of location 223
fixtures in 218
in Colorado 218
"mines or mining claims," meaning of, in statute imposing tax 1
mining a public use 286
nature of property in 217
operation of transfer 222
possessory rights in 217
requisites of transfer 221
sheriff's sale of 220
transfer of. See tit. **Transfer.**
as to, generally 218
by corporation 220
by deed of bargain and sale 222
construction of 222
operation of 222
repudiation of 222

Mines and mining. Transfer of (continued).
requisites of.
according to lines of location when 222
as to, generally 221
by any known description 222
deed of bargain and sale 222
parol evidence to aid 222
Mining. See tit. **Hydraulic mining.**
a public use, within eminent domain 286
by the hydraulic process, defined 373
in California. See tit. **California.**
injurious, prohibited by débris commission 371
Mining bells.
in California. See tit. **California.**
rules enforcing 553
signals to be given 552
"Mining by hydraulic process."
definition of 373
Mining claim. See tits. **Extent, size, and shape of mining claim; Relocation.**
abandonment of. See tit. **Abandonment.**
actions involving title, etc., to, in Colorado 580
appointment of deputies for survey of, land-office regulations respecting 434-437
are exempt from taxation, in Oregon 686
are real estate, in Oregon 686
as property. See tit. **Mines and mining claims.**
classes of, distinguished in town-site location law 277
conveyed by lines of location when 222
deed of bargain and sale to. See tit. **Deed of bargain and sale.**
discovery and location of, in Montana 590
divided in two parts by ground of another, patent of 172
fees and charges for office-work and stationery in survey of.. 488
how conveyed. See tits. **Mines and mining claims; Transfers.**
in California.
abandonment of 552
fencing or covering abandoned shafts 552
in shape of triangle, rights of locator 246
in Washington. See tit. **Washington.**
amended certificate of location 697
assessment-work.
proof of 697
road-building as 700
boundaries 696
cut or tunnel in lieu of shaft 697
definition of "lode" 697
discovery-shafts 696

Mining claim. In Washington (continued).
notice of location 696
placer claim, location of, how made 699
record, effect of, as evidence 700
relocation, how made 698
road-building as assessment-work 700
shafts, limitation of rule as to 698
length of, along lode or vein 324
location of. See tits. **Agents; Employees; Location.**
marking boundaries of. See tit. **Boundaries.**
mechanic's lien on 318
"mining claim," used interchangeably with "location"..... 5
nature and extent of, land-office regulations respecting..... 408
not open to relocation in night-time 152
parties obtaining possession of, under contract to perform certain covenants 222
partition of. See tit. **Partition.**
in Colorado 582
real estate, by statute, in Colorado 218
reference to another, in notice of location 115
surveyor to be appointed by surveyor-general 339
table of measurements to determine surface area of 767
who may take and hold, in Idaho 583
width of, in Idaho 584
Mining concessions. See tit. **Spanish concessions.**
prior, not affected, in Philippine Islands 405
Mining corporations. See tit. **Corporations.**
bankruptcy applies to 358
books and balance-sheets of, to be kept, in California 565
consolidation of.
in California. See tit. **California.**
calling meeting of stockholders, notice 564
certificate of consolidation, where filed 564
notice calling meeting of stockholders 564
to be signed by boards 564
stockholders, written consent of 563
written consent of stockholders 563
in California, protection of stockholders 563
monthly balance-sheets, in California, verified by oath of whom 565
reason or occasion for examination of books, etc., in California 567
right of stockholders to visit mine with expert in California.. 567
duty of superintendent on 567
failure of superintendent to obey orders 567
liability of president and directors refusing to permit examination 568
right to inspect books and records absolute in stockholders.. 566

Mining corporations (continued).
stockholders may examine mining property, in California.... 565
stockholders' right to inspect books and records, in California 566
superintendent to file monthly account.
in California.
open to inspection 566
report attached to 566
what must show 566
superintendent's failure to obey orders, in California, removal 567
Mining districts.
as to, generally 10
assessment-work regulated by, in Wyoming 705
in Utah 694
in Washington, rules and regulations 696, 700
organization of. See tit. **Miners' rules and regulations.**
Mining-ground. See tit. **Mining corporations.**
capital stock consists of, in Nevada 669
defined 3
kinds of possession of 5
Mining interests.
identical with "location" when 5
Mining laws.
extended to district of Alaska 361
in Alaska, as to 364
Mining partnerships.
differ from ordinary partnerships 308
grub-stake contract. See tit. **Grub-stake.**
member may deal with partnership 308
nature of 307
power of members limited 310
stranger may be admitted, without dissolving 308
when exist 308
Mining purposes.
mill site must be used for 62
what constitutes 63
Mining recorder. See tit. **Recorder.**
county recorder to be ex officio district, in Nevada 610
duplicate notices to be filed with county recorder..... 611
duplicate notices to be given by 611
duties of.
as to, generally 611
in Nevada 610
fees of.
in Nevada 610
to be collected for duplicate notices 611
seal of, in Nevada 612
receipt of, is prima facie evidence, in Nevada 612

Mining recorder (continued).
to be notified by county recorders.
as to, generally 612
penalty for failure 613
to give locator receipt, in Nevada 612
Mining regulations. See tit. **Miners' rules and regulations.**
in Philippine Islands.
annual labor 392
as to, generally 392
delinquent part-owners 392
improvements 392
relocation on non-compliance with regulations 392
in Washington 696, 700
Mining rights.
as to, generally 225
future, in Philippine Islands 406
ground located only as lode claim, "other valuable deposits" 229
kinds of possession.
after discovery of mineral 5
as to, generally 5
by occupancy 5
by work and improvements 5
limitation of meaning of "other valuable deposits"..... 230
locations of lodes 225
lode locations 225
no distinction between metalliferous and non-metalliferous deposits 228
on public domain 5
"other valuable deposits."
as to, generally 228
limited in meaning to what 230
meaning of, in Federal statute 229
prior locations 227
purchaser of lode claim from prior locator 227
withdrawal, effect of 226
Misdemeanor. See tit. **Penalty.**
publishing false statement by corporation is a, in Nevada..... 657
Mission lands.
in Alaska, occupants not to be disturbed 364
Missionary stations.
in Alaska 364
Missouri.
disposal of mineral lands as agricultural lands in 344
Mistake.
in making excessive claim 93
in placing of monuments on mining claim 101
Mode.
of marking boundary to mining claim 100

Money.
expended on tunnels, credited as assessment-work..... 328
Montana.
amendment to location-certificate 131
certificate of location of lode mining claim to be recorded, form of 738
citizens of, may fell and remove timber from public domain .. 353
doctrine as to marking placer claims 99
mining claims in.
abandoned claims, relocating. See tits. **Abandonment; Relocation.**
as to, generally 594
rights of relocator 594
act takes effect when 596
amended locations 594
boundaries of claim, when and how marked..... 591
certificate of survey 596
discovery and location 590
discovery-shaft to be sunk when 592
eminent domain.
mines, mills, and smelters 597
public uses 597
location of.
amended 594
as to, generally 590
made heretofore, valid 595
mill sites 593
monuments, sufficiency of, question of fact..... 591
notice of location 592
as to, generally 592
contents of 592
posted, and what to contain 591
verification of 593
patent, proof of compliance with state laws 596
relocations.
as to, generally 594
of abandoned claims. See **Abandonment.**
as to, generally 594
rights of relocator 594
previous rights not waived by 595
third person's rights not interfered with by 595
repealing clause 596
sufficiency of monuments question of fact 591
survey, certificate of 596
time prescribed not mandatory 595
notice of location of lode mining claim for posting, form of... 738

Montana (continued).
preliminary notice to be posted on placer claim, form of..... 740
statute of, relating to filing of location claims 128
statute regulating etxent, size, and shape of mining claims.. 91
Monument claim.
time allowed to, in Arizona 533
Monuments.
adopting, of a previous location 117
at place of discovery, in Idaho 584
location not rendered invalid by mistake in placing..... 101
natural, need not be on ground located 127
of a substantial character at each end of the claim..... 101
permanent, need not be on ground located 127
placing, on appropriated land, effect of 101
stakes, posts, etc.
as to, generally 102
setting at or near discovery-point 103
sufficiency of, in Montana question of fact 591
Mountain.
reference to, in notice of location 114
Mutual consent.
dissolution of grub-stake contract by 305
Name. See tit. **Corporation.**
of corporation to be conspicuously displayed, in Nevada..... 629
Natural gas.
lands containing, may be located as placer 49
Natural monuments. See tit. **Monuments.**
need not be on ground located 127
Natural objects.
need not be referred to in notice of location 117
Natural person.
application for patent for 707
Nature.
of action in adverse proceedings. See tit. **Adverse proceedings.**
as to, generally 199
in Alaska 200
law or equity 199
questions involved 199
state practice determines form of action 199
of mining partnership 307
of protest in adverse proceedings 186
Navigable channels.
noting effects on, by California débris commission 373
Navigation.
injury to, by hydraulic mining, penalty 379

Nevada.
act of 1867. See tit. **State statutes.**
affidavit of annual labor, form of 773
articles of incorporation in, form of 814
certificate of location of placer claim to be recorded, form of 744
citizens of, may fell and remove timber from public domain .. 353
corporation laws.
additional powers of 625
agent. See tit. **Agent.**
of foreign corporation.
on whom legal process may be served 679
to be appointed in state 679
penalty for failure to appoint 679
service of process on 679
to publish annual statements.
as to, generally 680
district attorney may commence suit 681
penalty for neglect to make and file 680
statement to be filed with each county assessor 680
to reside in state 679
agreement of merger. See "Merger," this title.
as to, generally 645
amended certificate of incorporation before payment of capital 639
amendment.
and changes after organization 641
by corporation formed under other acts 642
of certificate of incorporation before payment of capital.. 639
removal of place of business without 654
to corporation act 676
to cure error and omission in certificate of incorporation 640
annual statements by foreign corporations. See "Foreign corporation," this title.
appointment of receiver 666
articles or certificate of incorporation.
filing copy of, in other counties 655
shall set forth what 621
validating 662
as to, generally 620
association to make and keep agents in state 679
ballot, election to be by 630
bank corporations may act as resident agents 628
banking powers denied 625
bonds, etc.
convertible into common stock 638
of consolidated company 646

Nevada. Corporation laws (continued).
book of.
destruction of 658
making false entries in 658
names of members 656
business, failure to commence, forfeits charter..... 648
by-laws. See tit. **By-laws.**
how made 631
calls, sale of stock for non-payment of 636
capital stock.
amendment of certificate before payment of 639
filing of certificate upon payment of 638
method of decrease of 642
not to be reduced, etc., proviso 654
payment of subscribed 635
sale for non-payment of calls 636
subdivided 653
surrender of corporate rights before payment of 663
when company may buy 636
certificate of incorporation.
amendment of, before payment of capital 639
error or omission in, cured by amendment 640
shall set forth what 621
certificate of stock.
lost 652
proceedings to obtain new..... 652
who entitled to 650
changes and amendment after organization 641
charter.
forfeiture of, for failure to commence business.....648
renewal of 673-675
collateral attack on corporation not allowed..... 649
common stock, bonds convertible into 638
company.
may buy stock when 636
operating out of the state 620
compensation of receivers 669
continuation of corporation after dissolution for suits, etc. 665
conversion of preferred stock into bonds 638
corporate existence begins when 623
corporations for mining purposes. See "Mining corporations," this title.
county assessor, statement of foreign corporation to be filed with 680
county officers, duty of, on filing of copy of articles of foreign corporation 678
court, revisory power of 633

Nevada. Corporation laws (continued).
creditor, information for 657
cumulative voting 630
damages caused by false statements, liability for 657
decrease of capital stock.
liability not affected by 646
method of 642
directors.
first meeting for election of 627
meetings of, quorum 632
new board elected on removal of 660
proceedings for removal of 659
qualification of 630
removal of.
as to, generally 658
in certain cases 660
proceedings for 659
vacancies in board of 633
dissolution.
of corporation.
as to, generally 664
continuation of, after, for what purposes 665
power of trustees after 665
trustees after 665
of receivership, by court 667
district attorney can commence suit for penalty against foreign corporation 681
dividends 653
election of.
report to secretary of state 662
to be by ballot 630
eminent domain, rights of, granted to foreign corporations. 681
employees, liens of 662
errors in certificate of incorporation, cured by amendment 640
evidence of incorporation 623
executive committee, meetings of, quorum 632
executors, stock held by, how voted 651
exemption of stock held by non-resident 650
failure to commence business forfeits charter 648
false entry, penalty for making 658
false statements, publishing, a misdemeanor 657
fees. See tit. **Fees.**
chargeable to foreign corporations 678
filing certificate.
and recording copy of mining corporation 674
penalty for neglect to file, after written demand 638
upon payment of capital 638

Nevada. Corporation laws (continued).
filing copies of articles in other counties 655
first meeting.
as to, generally 627
for election of directors 627
foreign corporations.
duty of state and county officers on filing of copy of articles 678
fees. See tits. **Fees; Foreign corporations.**
as if organized in Nevada 678
on filing copy of articles 678
penalty. See tit. **Penalty.**
for failure to appoint agent 679
for neglect to file copy of articles 678
resident agents. See tits. **Agents; Corporations.**
banks and corporations may act as 628
right of eminent domain granted to 681
service of process on 679
to file copies of charter with secretary of state 677
to make and keep agents in state for service of legal process 679
to publish annual statement.
as to, generally 680
district attorney can commence suit 681
penalty for neglect to make and file 680
statement filed with each county assessor 680
forfeiture of charter for failure to commence business.... 648
formation of corporation, how accomplished 621
franchise, sale of 668
fraudulent account, keeping of, a crime 658
incorporation.
cannot be attacked collaterally 649
need not be proven 662
incorporators.
may amend certificate before payment of capital 639
surviving, may designate others for organization 640
information for creditor or stockholder 657
inspection of books by creditors 626
issue of bonds convertible into common stock 638
keeping fraudulent account a crime 658
labor, stock may be issued for 649
legal process, service of, on 663
liability.
created by statute of other states, not enforceable..... 637
no personal, of trustees 637
not affected by merger or decrease of capital stock..... 646
of stockholders until subscriptions are fully paid 637

Nevada. Corporation laws (continued).
liens of employees 662
lost certificates of stock 652
name to be conspicuously displayed 629
non-resident, exemption of stock held by 650
notice, meetings may be held without, when..... 675
officers of.
as to, generally 631
election of new board on 660
liable for damages for publishing false statements 657
proceedings for removal of 659
proceedings to organize meeting for 660
provision optional with what corporations 661
omissions in certificate of incorporaton, cured by amendment 640
organization, surviving incorporators may designate others for 640
other corporations, mining company may hold stock in..670-675
payment.
for stock of dissatisfied stockholders on merger 645
of subscribed capital stock 635
penalty. See tit. **Penalty.**
against foreign corporation.
failing to file articles 678
for failure to appoint agent in state 679
for neglect to furnish annual statement 680
for making false entry 658
for neglect to file certificate upon payment of capital.... 638
personal estate, stock is 631
personal property, stock may be issued for 649
place of business, removal without amendment 654
pledge of stock, and voting power of pledgor 652
pledgor of stock, power to vote 652
power of consolidated company 646
power of trustees after dissolution of company..... 666
powers of corporation.
additional powers 625
articles shall set forth what 621
as to, generally 623
banking powers denied 625
evidence of incorporation 623
existence begins when 623
how accomplished 621
preferred stock.
and other special stocks 625
conversion of, into bonds 638
principal office 628

Nevada. Corporation laws (continued).
proceedings in court to obtain new certificates of stock.... 652
proceedings when receiver is appointed 668
proxies to be filed 651
publishing false statements a misdemeanor 657
purposes for which corporations may be formed..... 620
qualification of directors 630
quorum. See tit. **Quorum.**
of directors 632
of executive committee 632
real property, stock may be issued for 649
receiver. See tit. **Receiver.**
appointment of 666, 667
compensation of 669
dissolution of, by court 667
proceedings when appointed 668
reduction of capital stock, provision as to 654
removal.
of directors 658
of place of business without amendment 654
renewal.
of charters 673
what corporations may renew 675
repealing of acts, vested rights not impaired 676
report of election to secretary of state 662
retaliatory taxation 673
revisory power of court 633
right.
may be given creditors.
to inspect books 626
to vote 626
to vote determined by stock-ledger 651
sale.
of deteriorating property 668
of franchise. See tit. **Franchise.**
as to, generally 647
manner of 648
of property and franchise 668
of stock below par may be made 649
seal of mining corporations 673
secretary of state, copies of charters of foreign corporations to be filed with 677
security on transfer when 653
service of legal process on 663
special and preferred stocks 625
state officers, duty of, on filing of copy of articles of foreign corporation 678

Nevada. Corporation laws (continued).
stockholders. See tit. **Stockholders.**
dissatisfied, on merger, payment for stock of 645
information for 657
liable until subscriptions are fully paid 637
meeting of 628
mining corporations may become 670
voting.
list of stockholders 650
powers of 629
stock.
certificate of 650
held by executors, how voted 651
held by non-resident exempt 650
issued for labor, etc., is fully paid 649
married women may transfer, same as feme sole..... 634
may be issued for labor 649
may be issued for personal property 649
may be issued for real property 649
personal estate 634
pledged, voting power of pledgor 652
preferred and other special 625
sale of, below par permitted 649
transfer of.
as to, generally 634
security required when 653
treasury, not to be voted 652
stock-ledger.
as to, generally 650, 656
to determine who may vote 651
subdivided capital stock 653
surrender of corporate rights before payment of capital stock 663
surviving incorporators may designate others for organization 640
taxation, retaliatory 673
transfer of stock.
as to, generally 634
security on, when 653
treasury stock not to be voted 652
trustees of.
after dissolution 665
not personally liable 637
powers after dissolution of company 666
vacancies. See tit. **Vacancies.**
by failure of persons elected to qualify 632
by failure to elect trustees 632
in board of directors 663

Nevada. Corporation laws (continued).
validating articles of incorporation 662
vested rights not impaired by repeal 676
vote, right may be given creditors to 626
voting.
list of stockholders 650
power of stockholders 629
treasury stock prohibited 652
waiver of notice of meeting 676
wilful destruction of books 658
grub-stake contract in 301
location-certificate of lode claim to be recorded, form of..... 741
making false entries in books 658
manner of sale of franchise 648
married women may transfer stock how 634
meetings.
may be held without notice when 675
of directors, quorum 632
of executive committee 632
of stockholders 628
members, book of names of.
as to, generally 656
inspection of 656
merger.
agreement of 645
bonds, etc., of consolidated company 646
liability not affected by 646
payment for stock of dissatisfied stockholders 645
power of consolidated company on 643
method of decrease of capital stock 642
method of location prescribed 615
mill site.
as to, generally 606
boundaries of, marking 607
location of.
notice must contain what 606
record of 607
void when 607
marking boundaries of 607
notice of location must contain what 606
record of location 607
void, location is, when 607
mineral deposits, located how 614, 615
mineral lands, state disclaiming interest in 613
mining corporation.
amendment of act 676
capital stock consisting of mining-ground 669

Nevada. Mining corporation (continued).
fees to secretary of state 671
filing certificates and recording copy 674
foreign corporations.
district attorney can commence suit against 680
duties of state and county officers 678
fees as if organized in Nevada 678
penalty. See tit. **Penalty.**
for failure to appoint agent 679
for neglect 678
for neglect to file statement 680
right of eminent domain granted to 681
statement to be filed with each county assessor 680
to file legal copies of charter with secretary of state.... 677
to make and keep agents in state for service of legal process.
agent to reside in state 679
as to, generally 679
service of process on 679
to publish annual statements 680
governed by district mining laws 670
may become stockholders, etc 670
may hold stock, etc., of other corporations 675
meaning of terms used in act 672
meetings held by consent without notice 675
renewal 675
repealing and continuing certain acts in force 676
retaliatory taxation 673
seal 673
secretary of state.
fees to 671
to compile and publish biennial list 671
vested rights not impaired 676
waiver 676
mining laws.
abandoned claims, relocation of 602
affidavit of work performed 603
amendatory or additional certificates 602
amount of assessment-work 603
assessment-work. See tits. **Annual labor; Assessment-work.**
affidavit of work performed 603
amount of 603
co-owners, notice to delinquents, and penalty 604
basis for determining value 615
boundaries defined how 600
certificate.
amendatory or additional 602

Nevada. Mining laws (continued).
defective, relocation 602
need not be sworn to 609
of surveyor becomes part of record..... 602
to be recorded with county recorder..... 609
to contain but one location 605
certificate of labor, need not be sworn to 609
certificate of location.
co-owners, notice to delinquents, penalty..... 604
county recorder.
certificates to be recorded with 609
penalty for failure to give notice 613
to be ex officio district mining recorder 610
to notify mining recorders 612
defective certificates, relocation 602
duplicate notices.
duty of mining recorders as to 611
fees to be collected for 611
fees for recording 611
to be filed with county recorder 611
duty of mining recorders 610
false dating of location-certificate prohibited 615
fees. See tit. **Fees.**
for recording duplicate notices 611
of recorders 610, 611
grub-stake contract to be recorded 616
labor, certificate of, need not be sworn to 609
land granted to and selected by state.
disclaiming interest in mineral lands 613
exploration and appropriation 613
location.
certificate of, need not be sworn to 609
includes what 602
of mineral deposit, how made 614, 615
location-certificates. See tit. **Location-certificates.**
false dating prohibited 615
penalty for false dating 616
location-notice. See tit. **Location-notice.**
must contain what 599-601
record not containing requisite items void 601
to be recorded 601
location-work, what constitutes 600
locator, who may be 599
lode claim. See tit. **Claims; Lode claims.**
additional certificates 602
amendatory certificates 602
apex. See tit. **Apex.**
cannot be followed beyond exterior lines 602

Nevada. Mining laws. Lode claim (continued).
assessment-work. See tit. **Assessment-work.**
affidavit of work performed 603
amount required 603
co-owners, notice to delinquents, and penalty for failure to give 604
penalty for failure to give notice to delinquent co-owners 604
boundaries 600
certificate of location to contain but one location 605
certificate of surveyor becomes part of record 602
certificates.
additional 602
amendatory 602
defective, relocation 602
defective certificates, relocation 602
following trend beyond exterior lines 602
location includes what 602
location-notice. See tit. **Location-notice.**
to be recorded 601
must contain what 601
record not containing required items void..... 601
location-work, what constitutes 600
notice of location. See tit. **Notice of location.**
must contain what 599
to contain but one location 605
notice to delinquent co-owners 604
relocation of abandoned claims 602
survey becomes part of record 602
who may locate 599
mining recorder.
county recorder to be ex officio district 610
duties of 610, 611
duplicate notices 611
fees of 610
notified by county recorders 612
seal of 612
notice of location. See tit. **Notice of location.**
must contain what 599
to contain but one location 605
notice to delinquent co-owners, penalty 604
penalty. See tit. **Penalty.**
for failure of county recorders to give mining recorders notice 613
for failure to deliver notice to delinquent co-owners..... 604
for false dating of certificates 616
placer claims. See tit. **Placer claims.**
boundaries of, marking 605

Nevada. Placer claims (continued).
location of 605
location-certificate.
recording 606
what must contain 606
marking boundaries of 605
recording location-certificate 606
what location-certificate must contain 606
work to be performed upon 606
private lands may be entered by prospector 614
prospector.
may enter private lands 614
may locate mineral deposit how 614
receipt.
prima facie evidence 612
recorder to give locator a 612
recorder.
fees of.
as to, generally 610
to be collected for duplicate notices 611
duplicate notices 611
to give locator receipt 612
recording. See tits. **Record; Recording.**
of grub-stake contract 616
relocation. See tit. **Abandonment.**
of abandoned claim 602
where certificates defective 602
salt-lands.
as to, generally 609
location of 609
relocation, what subject to 609
survey of 609
what subject to relocation 609
state.
disclaiming interest in mineral lands 613
lands granted to, exploration and appropriation 613
survey becomes part of record 602
title.
basis for determining value 615
false dating of location forbidden.
as to, generally 615
penalty for false dating 615
how acquired 615
tunnel right.
blind lodes or veins 608
boundary lines, establishment of 608
establishment of boundary lines 608

Nevada. Tunnel right (continued).
how located 607
recording 608
veins or blind lodes 608
value, basis for determining 615
what constitutes location-work 600
who may be locator 599
New discovery.
not necessary to valid relocation. See tits. **Discovery; Location; Relocation.**
New Mexico.
boundaries, marking surface 682
citizens of, may fell and remove timber from public domain .. 353
discovery-shaft 682
equivalent of 682
location. See "Notice of location," this title.
location-notice of lode claim, form of 745
marking surface boundaries 682
notice of location.
as to, generally 682
recording 682
recording notice of location 682
Newspaper.
character of newspaper 169
designation of, for publication of application for patent..... 169
Night-time.
mining claim not open to relocation in 152
Nome district.
in Alaska.
Non-compliance.
with miners' rules, etc. See tit. **Miners' rules and regulations.**
with statute in locating claims. See tit. **Location.**
Non-contiguous.
claims merely cornering upon each other are 74
land, use of, for mill site 61
Non-discovery of mineral.
as ground of protest 187
Non-liability.
care requisite in preparing notice 788
notice of, for labor or materials furnished, form of..... 787
notice necessary to protect owner 788
Non-metalliferous deposits.
no distinction between, and metalliferous 228
Non-mineral lands.
in Philippine Islands, patent for 400
land appropriated as not subject to entry 29

Non-mineral lands (continued).
patents for. See tit. **Patents.**
as to, generally 341
non-resident applicant for patent, in Philippine Islands, oath of 395
use of, for mill site 61
Non-residents.
applicant for patent, in Philippine Islands, oath of 395
exemption, in Nevada, of stock held by 650
North Dakota.
abandoned claims, relocating 684
amended certificate may be filed 684
amount of annual labor 684
annual labor, amount of 684
boundaries, manner of marking surface 684
certificate.
amended, may be filed 684
construed to contain what 684
of location of lode claim to be recorded, form of 747
to contain but one location 684
void when 683
claim.
manner of locating.
as to, generally 684
discovery-shaft 684
. equivalent of discovery-shaft 684
not to extend beyond exterior lines 684
discoverer.
to record claim 683
when recorded 683
discovery-shaft.
equivalent of 684
locating by 684
exterior lines, claim not to extend beyond 684
length of lode claim in 683
location-work, time within which must be done 684
lode claim.
discoverer to record 683
length of, in 683
when recorded 683
width of, in 683
manner of locating claim.
as to, generally 684
discovery-shaft 684
manner of marking surface boundaries 684
owner of land may demand security from miner 684
preliminary notice for posting on lode claim, form of 747

North Dakota (continued).
relocating abandoned claims 684
security from miner, owner of land may demand 684
time in which location-work must be done 684
width of lode claim in 683
Notary public.
a stockholder taking acknowledgment of affidavit, new affidavit required 179
must have jurisdiction in district 179, 180
Notice. See tit. **Notice of application for patent; Notice of location; Preliminary notice.**
calling meeting of stockholders for consolidation, in California 564
duplicate. See tit. **Duplicate notices.**
failure to post as ground of protest 187
for posting. See tit. **Posting.**
on ground of placer claim, in Washington, form of 756
on lode claim, in Washington, form of 754
in Idaho, must claim but one location 586
marking claim by posting, upon tree 101
meetings may be held without, in Nevada, when 675
of application for patent. See tit. **Patent.**
form of 711
of contest. See tit. **Contest.**
of proceedings 497
service of.
as to, generally 495
by publication 496
proof of 497
of enlistment to be given by soldiers and sailors 329
of forfeiture. See tit. **Forfeiture of location.**
of location. See tits. **Location-notice; Notice of location.**
in Idaho, affidavit to accompany 586
of lode mining claim, in Colorado, to be recorded, form of .. 732
of mill site, in Nevada, contents of 606
of non-liability for labor or materials furnished, form of 787
of placer location, in Idaho, form of 737
of proceedings 497
order of publication of.
as to, generally 717
publisher's agreement 717
preliminary, to be posted on placer claim, in Montana, form of 740
proof. See tit. **Proof.**
of posting upon claim 713
of publication of 718
that, and plat remained posted on claim during time of publication 719
publisher's agreement 167, 717

Notice (continued).
to co-owners. See tit. **Co-owners.**
as to, generally 142
publication of 143
waiver of, in Nevada 676
Notice of application for patent.
contents of notice.
as to, generally 165, 168
where location on unsurveyed lands 168
posting notice and plat 165
publication of.
as to, generally 167
character of newspaper 169
designation of newspaper 169
publisher's agreement 167
publisher's agreement 167, 717
Notice of location. See tit. **Location.**
amendment of 118, 533
contents and sufficiency of 113
adopting monuments of previous location 117
as to, generally 113
course of lines controlled by stakes 117
notice need not necessarily refer to natural objects..... 117
priority of marking boundaries and posting notices..... 115
reference to.
another mining claim.
accuracy in description of claim as to what required. 115, 117
as to, generally 115
mountain 114
sufficiency of description question of law and fact 118
written notice posted on a stake 114
for placer claim for posting, in Nevada, form of 743
in Idaho.
as to, generally 584
monument at place of discovery 584
in Montana.
as to, generally 592
contents of 592
to be posted when 592
in New Mexico. See tit. **New Mexico.**
in Oregon. See tit. **Oregon.**
as to, generally 685
posting 685
recording 685
in Utah. See tit. **Utah.**
as to, generally 694
recording 694

Notice of location (continued).
in Wyoming. See tit. **Wyoming.**
of lode claim..... 702
of placer claim, contents of 704
liberally construed 118
location-notice construed how 118
lode claim, preliminary, for posting on, form of 741
miners' rules and regulations respecting.
as to, generally..... 111
requiring posting of notice in particular way 112
must contain what, in Arizona 532
natural objects need not be referred to in 117
notice, amendment of 118
of lode claim for recording, in Washington, form of 755
of lode claim, in Idaho, form of 735
of placer claim, in Colorado 572
of placer claim, in Idaho 586
posted at the four corners of claim 103
posting. See tit. **Posting.**
as to, generally 111
in Colorado 576
preliminary, for posting on lode claim, form of..... 741
recording.
in Arizona 536
in Idaho 585
in Oregon..... 685
state statutes regulating.
as to, generally 112
Nevada statute 113
statute regulating recording of location-notice 124
statutes declaring mining a public use 288
cases under statutes 289
summary proceedings in, to sell estates of deceased or incompetent miners and infants 312
time of posting 100
time to record copy, in Arizona 532
to be posted.
in Montana.
as to, generally 591
what to contain 591
to contain but one location, in Nevada 605
what must contain, in Nevada 599
work required to be done before posting, in Wyoming..... 704
Number.
of locations in notice. See tit. **Location.**
of mill sites 64

Number of locations.
in application for placer patent 176
Nunc pro tunc.
affidavit to purchase cannot be filed 181
Oath. See tits. **Affidavit; Proof.**
in adverse claim, must be taken within the district 188
of applicant for patent, in Philippine Islands 395
of claimant in adverse claim, before whom made 332
Objections.
on application to purchase 357
Obliteration.
of markings of boundaries to claims.
as to, generally 108
California doctrine 108
Occupants.
of town site, entry of town authorities in trust for 274
Office-work.
and stationery, fees for, in survey of mining claims..... 488
Officers.
duty of, in Arizona, on filing articles of incorporation 546
of corporations.
in Nevada 631
liability for false statements published, in Nevada 657
other than registers and receivers, oral testimony before, in contest cases 500
removal of, in certain cases, in Nevada 659
Oil claims. See tits. **Assessment-work; Mineral-oil land.**
assessment-work required for 327
lease of, form of 804
limited to group of five 139
Oil lease.
form of 804
Omission.
and errors in certificate of incorporation cured by amendment, in Nevada 640
Open crosscut.
will hold lode claim in Colorado 577
Opening. See tit. **Discovery-shaft.**
Opinions. See tit. **Judgment.**
in contest cases 504
Option.
form of, with privileges of working, etc..... 776
Optional contract.
to sell. See tit. **Estates of deceased or incompetent miners and infants.**

Oral testimony.
before officers other than registers, etc., in contest cases..... 500
Order.
directing methods of hydraulic mining 375
for survey on application for patent 161
of publication of notice, form of 717
Ore. See tit. **Lode claim.**
extracted in tunnel through other claims, property of owners. 574
in place, what is 41
value of, as damages 581
what is not 42
Oregon.
abandoned claims deemed unappropriated mineral lands 687
affidavit of location-work 686
boundaries, marking in 686
certificate of lode location.
as to, generally 749
verification of 750
claims. See tits. **Claims; Mining claims.**
abandoned. See "Abandoned claims," this title.
conditions prescribed for locating claim 23
discovery-shaft. See tit. **Discovery-shaft.**
equivalent of, in 685
law governing 686
part of assessment-work 686
equivalent of discovery-shaft in 685
grub-stake contract in.
as to, generally 303
shall be in writing 686
location, recording notice of, in 685
location-work, affidavit of 686
marking boundaries in 686
mineral land, unappropriated, abandoned claims deemed..... 687
mining claims. See tit. **Mining claims.**
are real estate in 686
exempt from taxation 686
notice of location in.
posting 685
recording 685
posting notice of location..... 685
real estate, mining claims are, in 686
recording notice of location in 685
statutes regulating recording mining location 121
taxation, mining claims are exempt from, in 686
unappropriated mineral lands, abandoned claims deemed 687

Organization.
of California débris commission 371
surviving incorporators may designate others for, in Nevada.. 610
"Other valuable deposits."
as to, generally 228
in case ground located as placer claim 229
issue is what 228
limited in meaning to what 230
meaning of, in Federal statute 229
no distinction between metalliferous and non-metalliferous deposits 228
Outside of claim.
assessment-work done. See tit. **Assessment-work.**
Owner.
action of three fourths of, in abandonment 146
may demand security of miner, in South Dakota 691
of land in North Dakota may demand security from miner.... 684
Ownership of surface.
right to mine is separate from, in Idaho..... 589
Parallelism. See tit. **Lode claims.**
essential to existence of right of locator 95
extralateral rights determined by 250
of end lines.
as to, generally 247
under act of 1872.
as to, generally 247-252
location made in substantial conformity to statute 252
of side lines 245
Parol evidence. See tit. **Evidence.**
of miners' rules and regulations. See tit. **Miners' rules and regulations**
Parol license.
for right of way for ditch in Colorado 578
Parties.
in adverse proceedings. See tits. **Adverse; Adverse proceedings.**
as to, generally 197
heirs of deceased claimant 197
Partition.
agreement not to partition null 317
character of title does not affect 317
of lode mining claims 316
of mining claims.
as to, generally 316
in Colorado 582

Partner.
grub-stake contract. See tit. **Grub-stake contract.**
in mining claim, going away not abandonment when 145
may not locate for his own benefit when 304
party to a grub-stake contract is a qualified 303
Partnership. See tit. **Mining partnerships.**
grub-stake contract is a qualified 303
Patent.
abandonment. See tit. **Abandonment.**
as to land included in application 174
as to tract embraced in application 174
abstract of title 167
affidavit. See tit. **Proof.**
and posting of notice on claim by agent.
as to, generally 179
notary public taking affidavit a stockholder, effect 179
where to be made.
as to, generally 179
cannot be filed nunc pro tunc 181
non-resident may make affidavit within district 180
resident beyond limited district, effect of 180
as to posting of notice. See tits. **Affidavits; Notice of application for patent.**
applicant deceased, heirs may make final proof 179
application for patent. See "Who may make application," this title.
abstract of title to be furnished 167
as to, generally 166
by natural person 707
contents of notices. See tit. **Notice of application for patent.**
entry for single location must not exceed what 176
excludes lode when 177
fee must be paid to register 166
five dollars each to register and receiver 166
for placer mining claim 707
includes lodes when 177
is a written sworn statement, contents of 166
lodes. See tits. **Lode; Lode claim.**
excluding when 177
including when 177
may embrace both placer and lode 177
notice on application for. See tit. **Notice of application for patent.**
are, in effect, a summons 168
as to, generally 178
contents of 168

Patent. Application for patent. Notice on application for (continued).
designation of newspaper 169
determining whether the published notice is in accordance with statute 168
proof of citizenship. See tit. **Citizenship.**
corporation is a, when 170
Federal statute not conclusive 170
may consist of what 169
where applicant a trustee 170
publication must be made in what class of newspaper.... 169
where location on unsurveyed land 168
publication. See tit. **Publication.**
publisher's agreement and publication 167
surveys and boundaries 177
application to purchase. See tit. **Application to purchase.**
final entry 174
register certificates 175
approval of survey. See tit. **Survey.**
as to, generally 164
as between lode patentee and tunnel-site claimant..... 213
as to, generally 209
attack.
collateral attack not allowed 214
conclusiveness against direct 213
boundaries of placer 177
certificate. See tit. **Certificate.**
ground embraced in application.
as to, generally 171
"contiguous," meaning of 171
where mining claim divided into two parts 172
of improvements 170
of purchase of mining claim has effect of 210
of register 175
of surveyor-general. See tit. **Surveyor-general.**
as to, generally 170
character of land 215
citizenship. See tit. **Citizenship.**
of patentee 216
proof of 169
claim in two land districts 173
coal-lands. See tit. **Coal-lands.**
in district of Alaska 182
patent for, in Alaska 182
conclusiveness.
of decision of land department 184
of, on direct attack 213
contents of notices of application 168

Patent (continued).
"contiguous" lands, meaning of 171
conveys the surface and subsurface 210
decision of land department conclusive 184
delay in prosecuting application, effect of 173
deposit of land-office fees 160
deputy surveyor. See tit. **Deputy surveyor.**
distinction between lode claim and placer claim in..... 211
effect and operation of 209
entry for single location of placer limited to what 176
evidence.
aliunde, admissible to fix dates when 241
may be taken by commissioner outside of land district..... 183
extralateral rights confered by. See tits. **Etralateral rights; Rights.**
as to, generally 210
field-notes. See tit. **Field-notes.**
final entry 174
for lode, conclusiveness of fact of discovery only 215
for mineral lands.
adverse claim. See tit. **Adverse claim; Adverse proceedings.**
amendments to rules 419
citizenship, land-office regulations respecting..... 429
conflicting claims. See tits. **Adverse claim; Adverse proceedings.**
evidence of possession sufficient to establish right to 335
for placer claim. See tit. **Placer claims.**
as to, generally 336
how obtained 329
in Philippine Islands. See tit. **Philippine Islands.**
lode claims 420-426
mill sites, land-office regulations respecting 428
necessity of proper proofs..... 430
placer claim.
land-office regulations respecting 426-428
proceedings to obtain 336
procedure to obtain, land-office regulations respecting ..417, 418
proofs, necessity for proper 430
reservations in, for right of way for ditches..... 358
subject to vested and accrued water rights 342
suits to annul, limitation of 359
for non-mineral lands. See tit. **Non-mineral lands.**
as to, generally 341
mill sites 341
ground embraced in application 171
group of claims See tit. **Group of claims.**
improvements upon 178

Patent (continued).
heirs may make final proof when 179
improvements. See tit. **Improvements.**
certificate of 170
in Philippine Islands. See tit. **Philippine Islands.**
issuance of, on performance of labor 140
issued under general town-site laws 212
jurisdiction. See tit. **Jurisdiction.**
of land department.
as to, generally 183
evidence may be taken by commissioner outside of land district 183
of land-office 216
land department, jurisdiction of 183
location on unsurveyed land 168
may issue, on application of company 159
mill sites. See tit. **Mill sites.**
method of obtaining patent to 178
mining claim divided into two parts by land of another 172
must issue on application of company 159
newspaper. See tit. **Newspaper.**
notary public taking affidavits, stockholder, effect of 179
notice of application and plat, posting. See tit. **Notice of application.**
as to, generally 165
for placer 177
number of mineral locations in survey, no limit 162
nunc pro tunc affidavits cannot be filed 181
obtained by collusion 215
operation of 209
placer claim. See tit. **Placer claim.**
may embrace lode 177
number of locations unlimited 176
price of placer-ground 176
proceedings for patent for 175
placer patents. See tit. **Placer claims.**
boundaries of 177
conflicting with lode claim 213
conveys what title 211
entry for single location limited to what 176
may embrace both placer and lode 177
notice of application 178
number of locations unlimited 176
price of placer-ground 176
proceedings to obtain patents for 175
surveys and boundaries 177

Patent (continued).
proceedings to obtain United States.
for placer patents. See tit. **Placer claims.**
forms in. See tit. **Forms.**
improvements. See tit. **Improvements.**
posting notice and plat. See tits. **Notice; Plat.**
affidavit of witnesses 165
as to, generally 165
survey of claim. See tit. **Survey.**
actual survey 161
application for order of survey.
as to, generally 160
signature of application 160
approval of survey 164
as to, generally 159
certificate of surveyor-general 164
deposit for land-office fees 160
employment of surveyor 159
field-notes, etc., to be forwarded to surveyor-general.
as to, generally 163
to be verified by affidavit 163
number of locations included in single survey 162
order of survey 161
report must contain what 163
return of field-notes by surveyor 162
signature to application for survey 160
who may make application.
a company 159
a corporation 159
a person 159
an associate 159
as to, generally 159
one interested in the group 159
proof of compliance with Montana statute 596
publication. See tit. **Publication.**
publisher's agreement. See tit. **Publication.**
as to, generally 167, 717
reformation of 213
register's certificate 175
regularity of proceedings in land-office 216
report of survey. See tits. **Report; Survey.**
reservations in 212
restrictions in 212
rights of applicant for 209
saline-lands. See tit. **Saline-lands.**
application must contain what 182
patent to 182

Patent (continued).
summons, notice of application for patent in effect a..... 168
survey of claim. See tit. **Survey.**
of placers 177
under statute of 1866 19
unsurveyed land, location upon 168
variance between the locus 215
Patented claim.
doing assessment-work upon, for group 138
Patentee.
of placer claim has full title to all lodes 211
rights of 260
Payment.
for work on restraining-dams and settling-reservoirs, how made 383
of capital stock. See tit. **Capital stock.**
Penalty.
for failure.
of county recorders to notify mining recorders, in Nevada.. 613
of foreign corporation to appoint an agent, in Nevada 679
to acknowledge contribution of co-owner, in Arizona 537
to file certified copy of articles, in California 562
for false swearing on application for purchase 356
for foreign corporation's neglect to file statement with county assessor 680
for making false entry in corporation-books, in Nevada..... 658
for non-compliance with miners' rules and regulations..... 15
for violating.
conditions in hydraulic mining 378
rules and regulations of Secretary of Interior 354
for violations injuring navigation 379
for wilful injury to works in hydraulic mining 379
Permanent monuments.
need not be on ground located 127
Permission.
to commence hydraulic mining. See tits. **Débris commission; Hydraulic mining.**
as to, generally 376
conditions imposed on 377
to enter and locate, granting of, abandonment when..... 145
Personal property.
stock of corporation is, in Nevada 634, 649
Pesos.
values reduced to 386
Petition.
for certiorari must contain what 514

Petition (continued).
for mining by hydraulic process.
allotment of expenses for common dumping-ground among mine-owners 377
authority 378
conditions as to commencing operation 377
examinations 375
expenses of operation 375
favorable decision within thirty days 375
hearings 375
joint petition by mining-claim owners when 374
limit of débris to be washed away 378
no taxes on gross proceeds to be collected when 375
order directing methods of mining 375
permission to commence mining 376
publication of petition 375
revoking authority 378
submission of plans, and work thereunder 376
taxes on gross proceeds 375
to be filed 374
Petroleum. See **Mineral-oil lands.**
entries of.
in Philippine Islands 398
under placer mining laws.
as to, generally 337
what not a sufficient discovery 337
land containing, may be located as placer 49
Philippine Islands.
adverse claims, proceedings and determination 395
bonds of deputy mineral surveyors 401
building-stone entries 397
cancelation of perfected Spanish concessions 406
claims.
abandonment of 392
affidavit on application to purchase 389
application to purchase, affidavit 389
citizenship, proof of 392
demarcation of.
as to, generally 387
difficult 391
difficult demarcations 391
disputes as to 391
fractional claims.
as to, generally 390
declaration 390
description of 390
sketch-plan 390

Philippine Islands. Claims (continued).
full size of 389
limit of claims 392
location lines 389
marking line of 388
prior claims not prejudiced 389
proofs of citizenship 392
recording 391
regulating location of 387
removal of posts unlawful 388
survey of 388
upon unsurveyed lands 397
coal-lands. See tit. **Coal-lands.**
conflicting claims to 404
declaratory statement 403
entries 402
limit of entries 403
preferences in right of entry 403
demarcation of claims 387
deputy mineral surveyors, bonds of 401
disposal of mineral lands in 386
grant for public works, mining lands reserved from 405
land districts, establishment of 402
locating mineral claims, regulations 387
measurements reduced to metric system 386
metric system, measurements reduced to 386
mill-site patents 400
mineral lands in.
abandonment of claims 392
affidavit of applicant for 389
annual labor or improvements 392
application for.
affidavit of applicant 389
as to, generally 389
bond of deputy mineral surveyors 401
cancelation of perfected Spanish concession 406
citizenship, proof of 392
claims of full size 389
coal-lands.
conflicting claims to 404
declaratory statement 403
entries of 402
limit as to entries 403
preference in 403
saline-lands 403
declaration for fractional claims 390
delinquent part-owners. See tit. **Co-owners.**
as to, generally 392

Philippine Islands. Mineral lands in (continued).
demarcation of claims.
as to, generally 387
difficult 391
description of fractional claims 390
difficult demarcations 391
disposal of 386
disputes. See tits. **Adverse claim; Adverse proceedings.**
as to, generally 391
entries, of coal-lands 402
establishment of land districts 402
fractional claims.
as to, generally 390
declaration 390
description 390
sketch-plan 390
future mining rights 406
land districts, establishment of 402
limit of claims 392
locating of mineral claims.
as to, generally 387
demarcation of claims 387
regulations 387
location lines 389
marking lines of claims 387, 388
measurements reduced to metric system 386
minerals on unpatented agricultural lands 386
mining regulations 392
patents to. See tit. **Patents.**
adverse claims, proceedings and determination 395
building-stone entries 397
claims.
on surveyed lands 397
on unsurveyed lands 397
how obtained 395
oath of non-resident applicant 395
of non-mineral lands.
for milling purposes 400
mill-site patents 400
subject to vested water rights 401
petroleum, etc., entries 398
placer claims.
affidavit, verification of 400
appointment of deputy surveyors.
as to, generally 399
charges for surveys 399
expenses of 399

Philippine Islands. Mineral lands in. Placer claims (continued).
establishment of right to patent, prior liens 398
limit of 398
on surveyed lands 398
prior liens 398
testimony 400
verification of affidavit 400
prior mining concessions not affected 405
proceedings and determination of adverse claims 395
proof of citizenship 392
protection of vested water rights. See tit. **Water rights.**
as to, generally 401
damages 401
purchased by citizens 386
recording claims 391
relocation on non-compliance with regulations 392
removal of posts unlawful 389
reserved from grants for public works 405
restrictions, prior claims not prejudiced 389
rules for mines 401
saline-lands.
as to, generally 403
auction and private sale of 404
sketch-plans of fractional claims 390
surveyors, deputy mineral, bond of 401
surveys 388
values reduced to pesos 386
water rights, patents subject to vested 401
minerals on unpatented agricultural lands 386
mines and mining claims in 319
mining concessions, prior, not affected 405
mining regulations. See tit. **Miners' rules and regulations.**
annual labor or improvements 392
as to, generally 392
delinquent part-owners 392
improvements 392
patents. See "Mineral lands," this title.
relocation for non-compliance with regulations 392
mining rights, future 406
non-mineral lands. See tit. **Non-mineral lands.**
mill-site patents 400
patents for 400
oath of non-resident applicant 395
pesos, values reduced to 386
purchase of mineral lands by citizens 386
regulations as to locating mineral claims 387

Philippine Islands (continued).
saline-lands. See tit. **Saline-lands.**
as to, generally 403
auction and private sales of 404
Spanish concessions, cancelation of perfected 406
vested water rights. See tit. **Water rights.**
damages 401
protected 401
Phosphate deposits.
lands containing, may be located as placer 49
Place of business.
removal without amendment, in Nevada 654
Place of discovery.
cornering claims non-contiguous 74
of mineral in claim 74
Place of land.
as affecting jurisdiction in adverse proceedings..... 195
Placer. See tits. **Placer claim; Placer-ground; Placer location; Placer mining laws.**
Placer claim.
adverse proceedings by 191
affidavit of location-work on, in Washington, form of 757
alum, deposits of, may be located as 46
application for patent for 707
as to, generally 44
asphaltum may be located as 46
borax may be located as 46
boundaries, marking, in Colorado 572
boundaries of 177
brick-clay, location of, as 47
bringing placer location within purview of statute..... 96
building-stone, location of, as.
as to, generally 47, 48
"lands chiefly valuable for stone" subject to entry 48
certificate of location of, to be recorded, in Nevada, form of... 744
clandestine entry, locator protected against 338
conformity to surveys 334, 335
containing lode claim in same area.
applicant for placer patent chargeable with notice..... 51
applicant may not go upon prior valid placer to locate vein. 52
as to, generally 51
location of vein not necessary 54
lode must be clearly ascertained 52
mere belief not based upon actual discovery 53
mere outcroppings not sufficient 53
time at which vein must be known 54
vein must be clearly ascertained 52
what constitutes known lode or vein 52, 54

Placer claim (continued).
distinction between, and lode claim in patent 211
embracing vein, not invalid 46
entry of.
building-stone lands as 336
mineral-oil lands as 337
petroleum lands as 337
evidence of possession to establish right to patent 335
excessive claim through innocent mistake 93
excessive size, effect of 92
extent, size, and shape of 92
fire-clay, lands containing, subject to location 48
fraudulent entry, locator protected against 338
granite-quarries are mineral, and may be located as 48
gulch placer claim, shape of 95
in Arizona. See tit. **Arizona.**
forfeiture of interest of co-owner.
acknowledgment of contribution by delinquent 537
affidavit by third persons as to 538
penalty for failure to acknowledge 537
as to, generally 536
record of forfeiture as evidence 537
how monuments must be placed 536
manner of locating 535
recording notice of location 536
in Idaho. See tit. **Idaho.**
affidavit accompanying filing of notice 586
development excavation 586
marking boundaries 586
notice of location 586
record of location 586
in Philippine Islands. See tit. **Philippine Islands.**
appointment of deputy surveyor.
as to, generally 399
charges for surveys 399
expenses of 399
establishment of right to patent 398
limit of 398
on surveyed lands 398
prior liens 398
in Utah, form of 753
in Wyoming. See tit. **Wyoming.**
assessment-work on. See tit. **Assessment-work.**
location-certificate, contents of 703
recording 702
land-office regulations respecting 413-416
limit of 334, 335

Placer claim (continued).
location-certificate of.
must contain what 512, 606
recording 572
what must contain 572, 606
location of.
in appropriation of land 45
in Nevada 605
in Washington 699
marble deposits, land containing, subject to location as 48
marking boundaries of.
as to, generally 98
California doctrine 99
in Nevada 605
Montana doctrine 99
maximum location of 334
natural-gas lands may be located as 49
necessity of discovery of mineral 73
not invalid because it embraces vein 46
notice.
for posting on ground of, in Washington, form of 756
of application 178
of, in Idaho, form of 737
of location.
in Arizona, form of 729
in Colorado 572
to be posted, in Nevada, form of 743
patent for. See tit. **Patent.**
as to, generally 336
conveys to patentee full title to all lodes 211
patented, conflicting with lode claim 213
petroleum-lands may be located as 49
phosphate deposits may be located as 49
preliminary notice to be posted on, in Montana, form of 740
proceedings for patent of 336
proceedings to procure patent.
as to, generally 175
entry for single location limited to what 176
lodes included when.
as to, generally 177
lode excluded when 177
may embrace both placer and lode 177
number of locations unlimited 176
price of placer-ground 176
recording location-certificate 606
reformation of lines 93

Placer claim (continued).
timber on lands will not prevent patent as 49
saline-lands entered as 49, 339
salt-lands may be located as 49, 339
stone for making lime, land containing, may be located as ... 49
strict accuracy in marking not required 94
subdivision of ten-acre tracts, maximum location 334
survey of. See tits. **Surveys; Surveyors; Surveyor-general.**
as to, generally 177
upon unsurveyed public land 95
valid discovery of mineral on 80
work to be performed on 606
Placer-ground. See tits. **Placer claim; Placer location.**
price of, in application for patent 176
Placer locations. See tits. **Placer claim; Placer-ground.**
confers what rights 227
limitation as to amount of single 176
not a location of lodes or veins underneath surface 227
"other valuable deposits." See tit. **Other valuable deposits.**
as to, generally 228
includes all solid minerals 229
limited in meaning to what 230
meaning of, in Federal statute 229
no distinction as to what 228
Placer mining.
definition of 44
Placer mining laws. See tit. **Mining laws.**
entry of building-stone lands under 336
entry of mineral-oil lands under.
as to, generally 337
what a sufficient discovery of oil 337
entry of petroleum-lands under.
as to, generally 337
what a sufficient discovery of oil 337
entry of saline-lands under 339
Plans.
and work thereunder in hydraulic mining, submission of 376
Plat. See tits. **Mining claim; Plats and diagrams; Town site.**
failure to post, as ground of protest 187
of town site, filing 273
proof that, and notice remained posted on claim during time of publication 719
Plats and diagrams. See tit. **Plats.**
certified copies of, fees of surveyors-general 492
fees for 490
no fees, commissions, or rewards for, when 491

Pleadings.
in adverse claim. See tit. **Adverse claim.**
as to, generally 200
by domestic corporation 202
Pledge of stock.
voting power of, in Nevada 652
Pledgor of stock.
power to vote, in Nevada 652
Porto Rico.
mines and mining claims in 319
Possession.
evidence of, sufficient to entitle to patent 335
mere holding of, without necessary work, not sufficient 148
of surface of mining claim location, rights as to veins, etc... 234
resumption of. See tit. **Resumption of work.**
as to, generally 148
right of locator to, and enjoyment 325
Possessory rights. See tits. **Locator; Mines and mining claims.**
estate acquired by locator 217
land-office regulations respecting 431
Posting.
discovery-notice for, on lode claim, in Idaho 734
first or preliminary notice for, in Colorado .....?..... 731
notice for, on ground of placer claim, in Washington, form of 756
notice for, on lode claim, in Washington, form of 754
notice of location. See tit. **Notice of location.**
for placer claim for, in Nevada, form of 743
of lode mining claim for, in Montana, form of..... 738
of notice.
affidavit of. See tit. **Affidavit.**
and plat upon claim, proof of 713
of location in Montana to be made when..... 592
preliminary notice. See tits. **Notice; Preliminary notice.**
for, on lode claim.
in Nevada, form of 741
in North Dakota, form of 747
for, on placer claim.
in Colorado 732
in Montana, form of 740
in Wyoming, form of 758
Posts to mining claim. See tit. **Monuments.**
removal of, unlawful, in Philippine Islands 389
setting, at or near discovery-point 103
Powers.
of attorney. See tit. **Proxies.**
of California débris commission .....371, 381, n.

Practice.
before district land-offices, etc. See tit. **Rules of practice in district land-offices, etc.**
Pre-emption.
of coal-lands. See tit. **Coal-lands.**
as to, generally 347
to be presented within sixty days 347
subject to vested rights 342
Preference.
in right to entry of coal-lands in Philippine Islands 403
in town-site location 275
Preferred stock. See tit. **Corporations.**
conversion into bonds, in Nevada 638
in Nevada 625
Preliminary notice. See tit. **Notice.**
for posting. See tit. **Posting.**
in Wyoming, form of 758
of placer claim, in Colorado, for posting, form of..... 733
on lode claim.
in Nevada, form of 741
in North Dakota, form of 747
to be posted on placer claim, in Montana, form of..... 740
President.
of mining corporation, in California. See tit. **California.**
for failure to have reports and accounts current posted.... 568
liability for refusal to permit examination 568
of United States, power to provide additional land districts and officers 343
Presumption.
of continuance of miners' rules and regulations..... 16
Previous rights.
not waived by relocation, in Montana 595
Principal office. See tit. **Corporations.**
of corporations, in Nevada 628
Prior claims.
not prejudiced, in Philippine Islands..... 389
Prior discovery.
mere knowledge of, not sufficient for valid location 75
Prior location.
necessary to relocation 151
of lode claim, purchaser, rights of 227
Priority.
among locators 104
determining, in adverse proceedings 203
in marking boundaries of claim and posting notices 115
Private corporations. See tit. **Corporations.**

Private land.
prospector may enter, in Nevada 614
Private sale.
of saline-lands, in Philippine Islands 404
Probate laws.
summary proceedings to sell estates of deceased or incompetent miners and infants not subject to 314
Proceedings.
before surveyors-general. See tit. **Rules of practice before district land-offices.**
forms in. See tit. **Forms.**
in land-office, in issuance of patent, regularity 216
notice of. See tit. **Notice of proceedings.**
to obtain patent. See tit. **Patent.**
Process. See tit. **Legal process.**
Proof.
in adverse claim. See tits. **Affidavit; Evidence.**
as to, generally 200
by domestic corporation 202
of annual labor. See tits. **Annual labor; Assessment-work.**
in Alaska, form of 770
in Arizona, as to form 534, 771
in California, form of 771
in Colorado, as to form 587, 772
in Idaho, as to form 579, 772
in Nevada, form of 773
in Utah, form of 773
in Wyoming, form of 775
of assessment-work. See tit. **Assessment-work.**
as to, generally 697
effect of record of 698
in Washington, form of 774
of citizenship. See tit. **Citizenship.**
affidavit of. See tits. **Affidavit.**
before whom made 325
as to, generally 324
in Alaska, land-office regulations respecting..... 430
in Philippine Islands 392
of posting notice and plat upon claim 713
of publication.
of forfeiture-notice, form of 769
of notice of application for patent 718
of ratification by principal 70
of rules and regulations. See tit. **Miners' rules and regulations.**
as to, generally 16

Proof. Of rules and regulations (continued).
best evidence 16
documentary evidence 17
parol evidence to prove 17
presumption of continuance, in Idaho 16
written local mining laws of district, how proved 17
of service of notice of contest 497
on application to purchase 357
that plat and notice remained posted on claim during time of publication 719
Property.
mines and mining claims as. See tit. **Mines and mining claims.**
of corporation, sale of, in Nevada 668
Prospecting.
under grub-stake contract, must be with reasonable diligence 304
Prospecting contracts. See tit. **Grub-stake contracts.**
Prospector.
may enter on private lands, in Nevada 614
may locate mineral deposits, in Nevada, how 614, 615
Protection.
of workmen, in California 554
Protest. See tit. **Adverse proceedings.**
adverse claim. See tits. **Adverse; Adverse claim.**
as basis of adverse proceedings 189
by agricultural claimant 191
by co-owners 191
by heirs of claimant 191
by mill-site owner 190
by placer claimant 191
by tunnel-site owner 191
effect of failure to file.
as to, generally 193
not applicable to joint owner..... 194
Federal statute regulating filing of 189
is appropriate recourse of claimant when 189
jurisdiction of court. See tit. **Jurisdiction.**
as to, generally 194
equity jurisdiction 196
Federal courts, of 194
place where land is situated 195, 196
removal from state to Federal court. See tit. **Removal.**
as to, generally 196
state courts, of 194
subject-matter of jurisdiction 195
methods of settlement 192
nature of 188
oath must be taken within district 188
procedure on 189

Protest. Adverse claim (continued).
purpose of 188, 190
when may be filed.
appeal from, lies when 193
as to, generally 192
dormant application 193
on holiday 193
out of business hours 192
time of, how computed 193
allegation of adverse ownership 188
as to, generally 186
challenges only applicant's claim 188
co-ownership, protest based on 188
Federal statutory provision 186
grounds of.
as to, generally 187
failure as to any of the substantial requirements 187
non-discovery of minerals as 187
nature of 186
protestant cannot set up right of third party 187
purpose of 186
standing of protestants 187
sufficiency of affidavit 188
Protestants. See tit. **Protest.**
allegations of adverse ownership 188
cannot set up rights of third party 187
standing of 187
Proxies. See tit. **Corporations.**
of consolidated company, in Nevada 646
of corporations, in Nevada 623
to be filed, in Nevada 651
Public domain.
cancelation of entry does not restore land to 28
decisions rejecting application to enter, appeals from 506
discovery of minerals in, effect on town site. See tit. **Town site.**
restoration to.
of agricultural lands 351
of mineral lands 351
right to fell and remove timber from, for mining and domestic purposes 353
unsurveyed, placer claims upon 95
use of, and material in hydraulic mining 379
withdrawal from sale and entry 379
Public uses.
in Montana 597
Publication.
character of newspaper 169

Publication (continued).
failure to make, as ground of protest 187
newspaper to be designated 169
notice of contest by 496
of notice.
of application for patent 167
of co-owners 143
of petition for hydraulic mining 375
of surveys, land-office regulations respecting 434-437
proof of.
of forfeiture-notice, form of 769
of notice of application for patent 718
publisher's agreement 167
Publisher's agreement.
form of 717
on application for patent 167
Purchaser.
of lode claim from prior locator, rights of 227
Purpose.
of protest in adverse proceedings 186
Question of fact.
valid discovery of mineral is a 83
Quitclaim deed. See tits. **Deed; Lease.**
to mining claim 783
Railroad. See tit. **Railroad grant.**
right of way, mineral location subject to 7
Railroad grant.
not subject to location 31
"right of way act" of Congress 31
saline deposits, effect on 32
Southern Pacific grant, exceptions as to 32
Ratification.
of location by agent 70
proof of 70
Real estate.
mining claims are.
by statute, in Colorado 218
in Oregon 686
stock may be issued for, in Nevada 649
Real property.
stock may be issued for, in Nevada 649
Reasonable diligence.
in prosecuting adverse claim. See tits. **Adverse claim; Adverse proceedings.**
as to, generally 205
no exception to rule 205
required in prospecting under grub-stake contract 304

Receipt.
of mining recorder prima facie evidence, in Nevada 612
recorder to give to locator, in Nevada.
as to, generally 612
receipt prima facie evidence 612
Receivers. See tit. **Rules of practice before district land-offices, etc.**
fees of. See tit. **Fees of registers; Receivers; Surveyors-general.**
land-office regulations respecting 434-437
in Alaska. See tit. **Alaska.**
clerks of court and marshals to act as 366
fees of 366
no salaries 366
of corporations.
compensation of, in Nevada 669
dissolution of, by court, in Nevada 667
in Nevada 666
proceedings, in Nevada, when appointed 668
of local land-office, duty of 354
Record.
amendments of. See tit. **Amendment.**
as to, generally 130
in Colorado 130
in Montana 130
as to, generally 127
certified copies of, fees of surveyors-general 492
contents of 127
defects in, do not void locations when 128
effect of.
as evidence. See tit. **Evidence.**
as to, generally 131
in Washington 700
failure to, within time 123
proof of assessment-work, in Washington 698
fee for, in South Dakota 693
in Alaska. See tit. **Alaska.**
what instruments to be recorded 363
where instruments to be recorded 363
information 490
is required to be made where 122
local rules and regulations as to 121
local statutes.
as to, generally 121
in Oregon 121
natural and permanent monuments 127

Record (continued).
of certificates by county recorder, in Nevada 609
of claim by discoverer, in South Dakota 688
of location after extinguishment of Indian title .....30, n.
of location-notice not containing statutory provisions void, in Nevada 601
of location of mill site, in Nevada 607
of mining claims. See tits. **Claim; Mining claim.**
as to, generally 120
distinction between, and location 120
of notice of location. See tit. **Notice of location.**
in New Mexico 682
in Oregon 685
in Utah 694
statutes, local, as to 121
statutes regulating 127
Alaska, regulation in 130
Colorado statute 127
local, as to 121
Montana statute 128, 129
time of recording. See tits. **Record; Recording.**
in Colorado 124
in Idaho 124
in Nevada 124
time when to be made.
as to, generally 122
in Colorado 123
in Wyoming 123
rule for computation of time .....123, n.
Sunday to be excluded in computation of time for .....123, n.
to tunnel claim, in Colorado 573
transcripts from, fees for 490
where to be made 122
Record information.
fees for 490
Record of location. See tit. **Record.**
of placer claims, in Idaho..... 586
Recorder. See tit. **County recorder.**
duty of deputy, in Idaho, to transmit notices to 588
fees of, in Nevada 610
in Alaska district.
as to, generally 362
change of district 363
what to be recorded 363
when instruments to be recorded 363

Recording.
in Philippine Islands 391
location-certificate of placer, in Colorado 572
notice of location. See tit. **Notice of location.**
in Arizona 536
in Idaho 585
of location-certificate, in Nevada 606
of tunnel right, in Nevada 608
Recording districts.
in Alaska 361, 362
Reduction.
of capital stock, in Nevada 654
Reforming.
of lines. See tits. **Extent, size, and shape of mining claim; Location; Mining claims.**
as to, generally 93
of patent 213
Registers. See tit. **Rules of practice before district land-offices, etc.**
and receivers, fees of, land-office regulations respecting....434-437
fees of. See tit. **Fees of registers; Receivers; Surveyors-general.**
in Alaska. See tit. **Alaska.**
clerks of court and marshals to act as 366
fees of 366
no salaries 366
of local land-office, duty of 354
Register's certificate.
in application to purchase 175
Regularity.
of proceedings in issuance of patent 216
Regulations. See tit. **Land-office rules and regulations.**
of Department of the Interior .....407, n.
of district land-offices .....407, n.
of general land-office .....407, n.
of water rights granted for mining purposes.
as to, generally 354
in forest reserves 354
regarding recognition of agents and attorneys in Department of Interior 521
Rehearing.
before Secretary of Interior 508
in contest cases 498
Relocation. See tit. **Abandoned claims.**
actual abandonment or forfeiture necessary to relocation 152
actual forfeiture or abandonment necessary to a valid 152

Relocation (continued).
admits validity of prior location 153
and conveyance by locator to former owner, effect of, on forfeiture 149
as to, generally 151
by whom may be made.
as to, generally 155
by agent of original locator 155
by co-owner 155
by lessee 156
stockholder in corporation 155
certificates defective 602
dates from what time 156
from what time dates 156
ground must be open to 151
how made, in Washington 698
improvements. See tit. **Improvements.**
not available to relocator as assets 157
pass by, when 157
in Idaho. See tit. **Idaho.**
as to, generally 585
in Montana. See tit. **Montana.**
of abandoned claims 594
rights of relocator 594
time of relocation 594
in night-time, not valid 152
mode of relocation.
as to, generally 152
in Arizona 152, 154
in Colorado 152
new discovery not necessary 155
of abandoned.
claims, in Idaho 585
lode claims 602
of valid claim by owner to correct defects 119
on non-compliance with regulations, in Philippine Islands ... 392
open to relocation.
ground must be 151
mining claim is not, in night-time 152
prior location must have been made 151
relocator. See tit. **Relocator.**
not a discoverer of mineral 152
salt-lands are subject to, in Nevada, when 609
state statutes as to.
Arizona statute 152, 154
Colorado statute 152
stockholder of corporation may make 155

Relocator.
new discovery of minerals 155
rights of, in Montana 594
who may be.
agent of original locator 155
as to, generally 155
co-owner 155
lessee 156
stockholder of a corporation 155
Removal. See tit. **Corporations.**
in Nevada. See tit. **Nevada.**
new board elected how 660
of directors 658
of officers or directors, in certain cases.....659, 660
of officers, in certain cases, in Nevada 659
of place of business without amendment, in Nevada 654
of superintendent of mine, in California, for what 567
Removal of cause.
in adverse proceedings 196
Renewal of charters.
in Nevada 673
what corporations may secure, in Nevada..... 675
Reports.
and accounts current, liability of president and directors for failure to have posted 568
annual, of California débris commission 373
in contest cases 504
of débris commission 379
of deputy surveyor to be verified by own affidavit and forwarded to surveyor-general 163
of superintendent of mining company, in California 566
Requirements.
as to assessment-work, source of 132
Requisite.
of location. See tit. **Location.**
of rules and regulations. See tit. **Miners' rules and regulations.**
of transfer 221
Reservations.
forest. See tit. **Forest reservations.**
in patents. See tit. **Patents.**
as to, generally 212
to mineral lands for right of way for ditches 358
Indian. See tit. **Indian reservations.**
Reservoir sites.
not subject to location 29
selected how 349

Resident.
corporation is a, when 170
Resident agent.
fee to, in Arizona 545
of corporations, banks and corporations may be, in Nevada... 628
Resolution.
by corporation, authorizing individuals to represent company in patent proceedings 710
Restoration.
of agricultural lands to public domain 351
of mineral lands to public domain 351
Restraining-dams.
in hydraulic mining 381
to be built from special appropriations or débris fund 381
Restrictions.
in patent 212
in Philippine Islands 389
Resulting trust.
in grub-stake contract 305
Resumption of work.
avoids forfeiture when 148
burden of proof on contestant 149
relocation and, effect of, on forfeiture 149
Retaliatory taxation.
of corporations, in Nevada 673
Review.
before Secretary of Interior 508
Reward.
none allowed for extra services by United States land-offices when 491
Right and rights. See tits. **Extralateral rights; Previous rights.**
conferring, by patent. See tit. **Patent.**
egress from reservations 351
existing in pending applications to purchase 334
in forest reservation. See tit. **Forest reservations.**
ingress to reservations 351
locator's right of possession and enjoyment 325
of applicant for patent 209
of egress from reservation 351
of owner of tunnel 326
of stockholders. See tit. **Corporations.**
to inspect books and records.
in California 566
reason or occasion for examination 567

Right and rights. Of stockholders (continued).
to visit mine with expert. See tit. **Mining corporations.**
duty of superintendent.
as to, generally 567
removal for failure to obey orders 567
in California 567
liability of president and directors for refusal to permit examination 568
of third persons, not interfered with by relocation, in Montana 595
of water. See tit. **Water rights.**
possessory. See tit. **Possessory rights.**
previous, not waived by relocation, in Montana 595
provisions of statute not to affect certain 343
rights reserved in entry of coal-lands 349
stockholders to examine mining property, in California 565
to cut timber. See tit. **Timber.**
to fell and remove timber from public domain for mining and domestic purposes 353
to mill site. See tit. **Mill sites.**
to reservoir sites. See tit. **Reservoir sites.**
to tunnel. See tit. **Tunnel sites.**
to water rights. See tit. **Water rights.**
vested. See tit. **Vested rights.**
Right of third party.
protestant cannot set up 187
Right of way.
for canals 342
for ditch, etc.
in Colorado 578
parol license for 578
reservations for, in patents 358
for tunnel claims, in Colorado 573
for water to lode claim, in Colorado 573
in California. See tit. **California.**
of railroad, mineral location subject to 7
"Right of way act" of Congress.
as to, generally 31
Right or title. See tit. **Title.**
establishment of, in adverse proceedings. See tit. **Adverse proceedings.**
as to, generally 202
burden of proof 203
Right to mine.
separate from ownership of surface, in Idaho 589
Right to trial by jury. See tit. **Jury.**
in adverse proceedings 202

Rights reserved.
in entry of coal-lands 349
Road-building.
as assessment-work, in Washington 700
Roasting ores.
cutting timber for 354
Rule.
as to shafts, limitation, in Washington 698
Rules and regulations. See tits. **Land-office rules and regulations; Miners' rules and regulations.**
of miners. See tit. **Miners' rules and regulations.**
of procedure of California débris commission 371
of Secretary of the Interior, penalty for violating 354
Rules of mining. See tit. **Miners' rules and regulations.**
in Philippine Islands.
as to, generally 401
bonds of deputy mineral surveyors..... 401
protection of vested water rights 401
Rules of practice before district land-offices, etc.
agents. See tit. **Agents.**
laws and regulations governing recognition before Department of Interior 519-523
regulations governing recognition of, before land-officers.515-519
appeal 515
attorneys.
laws and regulations governing recognition of, before Department of Interior 519-523
regulations governing recognition of, before land-officers.515-519
certiorari.
petition for writ of, must contain what 514
practice on 515
compulsory attendance of witnesses 523-530
under act of January 31, 1903.
as to, generally 523
circular of Department of Interior, March 20, 1903....523-526
amendment to 526-530
laws and regulations governing recognition of agents and attorneys.
as to, generally 519-523
laws 519-521
regulations 521-523
other persons than agents or attorneys representing claimants before Department of Interior, laws and rules governing 519-523
practice 515

Rules of practice before district land-offices, etc. (continued).
proceedings before commissioner of general land-office.
appeal to the Secretary 509-512
argument 508
as to, generally 508
attorneys 512
decisions 513
examination and argument 508
rehearing and review 508
review of 508
proceedings before registers and receivers.
appeals. See tit. **Appeals.**
as to, generally 503
from decisions rejecting application to enter public lands 506
as to, generally 494
contest, notice of 495
continuances 498
costs, taxation of 505
depositions on interrogatories 499
hearings in contested cases 494
intentions to contest 494
notice of. See tit. **Notice.**
contest 495
proceedings 497
publication 496
opinions and reports 504
oral testimony before officers other than registers or receivers 500
proceedings, notice of 497
proof of service of notice 497
rehearings 498
reports and opinions 504
service of notice 495
taxation of costs 505
transferees and encumbrancers, notice to 495
trials 501
proceedings before surveyors-general 507
regulations governing recognition of agents and attorneys before Department of Interior 521-523
Secretary of Interior.
appeal to 509-512
argument before 508
as to, generally 508
attorneys 512
decisions 513
examinations before 508
rehearing 508
review 508

Rules of practice before district land-offices, etc. (continued).
writ of certiorari, petition for, must contain what 514
Rules of procedure.
of California débris commission 371
Sailors and soldiers.
in war with Spain relieved from assessment-work.
as to, generally 328
notice of enlistment to be given 329
Sale.
conditions of, fixed by local legislature 341
of deteriorating property, in Nevada 668
of franchise. See tit. **Franchise.**
of public lands, withdrawal of 379
Saline act. See tit. **Saline-lands.**
land-office regulations respecting 416
Saline deposits.
bring land within exception in railroad grant when 32
Saline-lands. See tit. **Salt-lands.**
application for patent of 182
effect of saline deposits within lands granted to railway ..31, 32
entry under placer mining laws 339
in New Mexico 33
in Philippine Islands. See tit. **Philippine Islands.**
in railroad grants 32
in Utah 339
subject to location as placer 49
Salt-lands. See tit. **Saline-lands.**
in Nevada 609
location of 609
subject to relocation when 609
survey of 609
School-lands.
in Alaska, occupants not to be disturbed 364
Scripping. See tit. **Town site.**
Seal.
of corporation, in Nevada 673
of mining recorder, in Nevada 612
Secretary of Agriculture.
may permit removal of timber. See tits. **Forest reservations; Reservations.**
as to, generally 353
exception.
in Alaska forest reserve 353
in Black Hills forest reserve 353
in Idaho forest reserve 353
in South Dakota forest reserve 353

Secretary of Interior. See tit. **Rules of practice in district land-offices, etc.**
agents before 515-523
appeal to 515
appeals from commissioner of general land-offices 509-512
arguments before 508
attorneys before 515-523
certiorari, petition for, should contain what 514, 515
compulsory attendance of witnesses 523-530
decisions of 513
examination before 508
practice before 515
rehearings 508
reviews 508
rules governing recognition of agents and attorneys before.. 515
Secretary of state.
duties of, in Nevada, in relation to foreign corporations..... 678
fees of, to foreign corporation, in Nevada 678
in California, fees of 558-561
in Nevada. See tit. **Nevada.**
report of election of officers of corporation to, in Nevada.... 662
Secretary of War.
authority of, in restraining or impounding mining débris in California 383
Security.
owner of land may demand of miner.
in North Dakota 684
in South Dakota 691
Senior location.
projecting lines across 241
Separate lode. See tit. **Lode.**
Service of notice.
of contest. See tit. **Contest.**
proof of service 497
Settlement.
of adverse proceedings, methods of 192
Settling-reservoirs.
in hydraulic mining 381
to be built from special appropriations or débris fund 381
Shaft. See tit. **Abandoned claim; Discovery-shaft.**
limitation of rule as to, in Washington 698
Sheriff's sale.
of mining claim 220
Side lines. See tits. **Boundary lines; End lines; Lines.**
as to what are 245
becoming end lines 245

Side lines (continued).
end lines not at right angles with 253
extralateral rights determined by. See tit. **Extralateral rights.**
following strike outside 26
in Colorado 577
location made in substantial conformity to statute 252
mining claim in shape of triangle..... 246
of lode claim need not be straight line 95
parallelism of 245, 247
vein. See tit. **Vein.**
departing and entering same side line 255
having apex outside of 258
lying along a common side line 255
other than discovery-vein within 257
Signature.
of application for survey 160
Size of claim. See tit. **Extent, size, and shape of mining claim.**
Smelting purposes.
cutting timber for 354
Soldiers and sailors.
in war with S[illegible] relieved from assessment-work.
as to, generally 328
notice of enlistment to be given 329
South Dakota.
abandoned claims, relocating 692
amended certificate may be filed when..... 691
amount of work or labor that must be done annually 692
annual labor. See tits. **Annual labor; Assessment-work.**
amount to be done 692
boundaries, marking surface 690
certificate. See tit. **Certificate.**
amended, may be filed when 691
construed to contain what 691
of location, as to form in 751
of register, for posting 751
to contain but one location 693
void when 689
claim. See tits. **Claims; Mining claims.**
length and size of..... 688
manner of locating 690
marking surface boundaries 690
not to extend beyond exterior lines 691
record of, by discoverer, when, and when recorded..... 688
requisites of location 690
discoverer to record claim.
as to, generally 688
when recorded 688

South Dakota (continued).
exterior lines, claim not to extend beyond 691
fee for recording location-certificate 693
forest reserve of, removal of timber from 353
labor. See tit. **Annual labor.**
amount to be done annually 692
time in which must be performed 691
location.
and size of claims 688
certificate to contain but one 693
requisites of 690
location-certificate. See tit. **Location-certificate.**
fee for recording 693
to contain but one claim 693
lode. See tits. **Lode; Lode claim.**
length of 688
width of 688
manner of locating claims.
as to, generally 690
marking surface boundaries 690
requisite of location 690
marking surface boundaries 690
miner, owner of land may demand security from 691
owner of land may demand security of miner 691
preliminary notice of location in, as to form 751
record. See tits. **Record; Recording.**
of claim by discoverer 688
of location-certificate, fee for 693
when recorded 688
relocating abandoned claims 692
requisites of location 690
security, owner of land may demand from miner 691
time in which labor must be performed 691
Southern Pacific railroad. See tit. **Railroad grants.**
"Space of intersection."
in Nevada 625
phrase construed 262
special stock. See tit. **Corporation.**
Spanish concessions. See tit. **Mining concessions.**
cancelation of perfected, in Philippine Islands 406
Stable.
on adjacent land 28
Stakes to mining claim. See tit. **Monuments.**
written notice of location posted on 114
Stamp-mill.
as an improvement 163

State.
and territorial statutes. See tits. **Arizona; California; Colorado; Idaho; Montana; Nevada; New Mexico; North Dakota; Oregon; South Dakota; Utah; Washington; Wyoming.**
disclaiming interest in mineral lands in Nevada 613
exempted from Federal mining laws 25
grant of lands to.
effect of 32
not to include mineral lands 345
land grants to. See tit. **Land grants.**
State courts. See tit. **Jurisdiction of courts.**
State engineers.
consultation of débris commission with 381
State laws.
proof of compliance with, on application for patent 596
State practice.
determines form of action in adverse proceedings..... 199
State statutes.
as to, generally 22
as to mill sites 61
California statutes. See tit. **California.**
in relation to mining, cases construed and applied .....21, n.
Federal statutes control when 22
must be complied with 24
must be merely supplemental 23
Nevada act of 1867, as to, generally 33
Oregon statute prescribing conditions in locating claim 23
regulating notice of location.
as to, generally 112
Nevada statute 113
regulating recording of mining location.
Alaska regulation 130
as to, generally 127
Colorado statute 127
Montana statute 128, 129
Stationery.
and office-work, fees and charges for, in survey of mining claim 488
Statute law. See tits. **Federal statutes; State statutes; Statutes.**
miners' rules and regulations must not conflict with 13
notable customs conflicting with statute law 13
Statute of limitations.
against suits to annul patents 359
Statutes. See tit. **Federal statutes; Local statutes.**
bringing placer location within purview of 96
compliance with, in mining location, in Arizona 532, 533

Statutes (continued).
of other states creating liability, not enforced in Nevada 637
provisions of, not to affect certain rights 343
Stock. See tit. **Corporations.**
corporations may hold, in other corporations, in Nevada 675
Stock in corporation.
held by executors, how to be voted, in Nevada 651
married women may transfer how, in Nevada 634
personal property, in Nevada 634
sale below par may be made, in Nevada 649
transfer of, in Nevada 634
Stockholder. See tit. **Corporation.**
book of members, in Nevada 656
calling meeting for consolidation, in California, notice 564
dissatisfied, in Nevada, to be paid on merger 645
information for, in Nevada 657
liability, in Nevada, until subscriptions fully paid 637
may examine mining property, in California 565
may make relocation 155
voting-list of, in corporations, in Nevada 650
voting power of, in Nevada 629
Stock-ledger.
of corporations, in Nevada 650
to be kept, in Nevada 656
to determine who may vote, in Nevada 651
Stone.
lands containing, which are suitable for lime may be located as placer 49
Stone and timber lands.
as to what constitute 358
Stone-land applications.
fees for 489
Stone-lands.
sale of 355
Stranger.
may be admitted to mining partnership without dissolving.
as to, generally 308
Colorado doctrine 309
Strike. See tits. **Following lode or vein on its dip; Lode claim.**
channel of. See tit. **Channel of stream.**
following.
limited by boundaries of claim 231
outside side lines 20
or course, meaning of 42
right to follow general outside of side lines 20
Study of methods.
by California débris commission 372

Submission.
of plans and work thereunder in hydraulic mining 376
Subrogation.
party buying interest and paying portion of assessment-work, not subrogated to rights of party seeking forfeiture 147
Subsequent locator.
cannot object 101
placing monument on appropriated land 101
Subsurface.
conveyed by patent 210
Sufficiency.
of discovery. See tit. **Discovery.**
as affected by character of contestants 81
of marking boundary of mining claim 100
of notice of location. See tit. **Notice of location.**
question as to, depends upon what 100
Suits.
to annul patents, limitations of 359
Summary proceedings. See tit. **Estates of deceased or incompetent miners and infants.**
mode of.
as to, generally 311
in Idaho 312
in Nevada 312
not subject to usual probate laws 314
optional contracts to sell 313
to sell estate of deceased or incompetent miners and infants.. 311
Summons.
notice of application for patent in effect a 168
Sunday.
to be excluded in computation of time for recording claim..123, n.
Superintendent.
of mining company, in California. See tit. **California.**
report attached to monthly account 566
to file monthly account 566
what monthly account of, must show 566
Surface.
conveyed by patent 210
Surface of mining-claim location.
possession of, confers right to veins, lodes, etc. 234
Survey of claim. See tit. **Application for patent.**
and certificate of surveyor become part of record, in Nevada .. 602
application for order of survey 160
approval of survey 164
by order of court, in actions involving title, in Colorado 580

Survey of claim (continued).
certificate of surveyor-general. See tit. **Surveyor-general.**
as to, generally 164
charges for, land-office regulations respecting 434-437
circulars to applicants 484
conduct of business, requirements in 484-488
deposit of land-office fees 160
employment of surveyor 159
fees and charges for office-work, stationery, etc. 488
field-notes of. See tit. **Field-notes.**
improvements. See tit. **Improvements.**
in Alaska, approval 367
in Montana, certificate of 596
in Philippine Islands. See tit. **Philippine Islands.**
appointment of deputy surveyors 399
charges for surveys 399
number of mineral locations in survey 162
of claims in the Philippine Islands 388
of débris-reservoirs 372
of mining claims.
general regulations of land-office respecting.
amendments to rules 449
as to, generally 442-444
how made 444-449, 450-454
of placer claim on application to purchase 177
of salt-lands, in Nevada 609
of town site. See tit. **Town sites.**
order of survey 161
report of 163
requirements in conduct of business 484-488
signature of application 160
the actual survey 161
Surveyed lands.
claims on, in Philippine Islands 397
lode or vein on, description of 333
placer claims on, in Philippine Islands 398
Surveying.
town site. See tit. **Town site.**
Surveyor. See tit. **Survey of claim.**
approval of.
as to, generally 164
certificate of.
part of record, in Nevada 602
surveyor-general. See tit. **Surveyor-general.**
deputy surveyor. See tit. **Deputy surveyor.**
may execute the survey 162
employment of 159

Surveyor (continued).
field-notes. See tit. **Field-notes.**
of mining claims, to be appointed by surveyor-general 339
report of 163
the actual survey 161
Surveyor-general.
certificate of.
improvements 170
on application for patent 164
fees of. See tits. **Fees of registers; Receivers; Surveyors-general.**
as to, generally 492
for certified copies of plats and diagrams 492
field-notes of deputy surveyor to be forwarded to 163
proceedings before 507
report of deputy surveyor to be made to 162
to appoint surveyors of mining claims 339
Surviving incorporators.
may designate others for organization, in Nevada 640
Taxation. See tit. **Retaliatory taxation.**
mining claims exempt from, in Oregon 686
Taxation of costs.
in contest cases 505, 506
Taxes.
for "débris fund" 380
on gross proceeds of hydraulic mining.
as to, generally 357
not to be collected when 375
on "mines or mining claims" 1
Tenant in common.
in mining claim, going away not abandonment when 145
parties to grub-stake contracts are 302
Territorial statute.
as to mill sites 61
Test.
of continuity of lode or vein 238
Testimony.
in Philippine Islands 400
oral. See tit. **Oral testimony.**
reducing to writing, fees for 489
Tide-lands.
as to, generally 34
littoral proprietor, rights of 35
not public lands, within meaning of mining laws 34
of Bering Sea, subject to location and work under regulations of Secretary of War.
Secretary of War has no jurisdiction of tide-lands owned by state 35

e tits. **Forest reservations; Reservations.**
stone lands, as to what constitute 358
in forest reserves, use of, by settlers 351
in valuable quantities, does not prevent deed to placer 49
removal of, from forest reserves. See tit. **Secretary of Agriculture.**
right to fell and remove, on public domain, for mining and domestic purposes 353
timber and stone lands, as to what constitute 358
Timber-cutting. See tit. **Timber.**
for roasting ores 354
for smelting purposes 354
Timber-land applications.
fee for 489
Timber-lands.
sale of 355
Time.
acceptance of entry does not determine 77
allowed to monument claim in Arizona 533
for sinking shaft 90
from which relocation dates 156
in which.
labor must be performed 691
location-work must be done, in North Dakota 684
record of location-notice to be made 123
to file adverse, method of computation 193
issuance of patent does not determine 77
of discovery with reference to locating claim 76
of marking mining claims 99
of recording location-certificate of placer, in Colorado 572
of sinking discovery-shaft, in Idaho 585
posting of sufficient notice of location 100
prescribed for locations in Montana not mandatory 595
rule for computation of time .....123, n.
Sunday to be excluded in computation of time .....123, n.
to investigate discovery before location 77
to record copy of location, in Arizona 532
to sink discovery-shaft, in Arizona 532
when assessment-work must be done 134
Time limit.
in grub-stake contract 304
Title.
character of, does not affect partition of mining claim 317
establishment of, in adverse proceedings.
as to, generally 202
burden of proof as to 203

Title. Establishment of, in adverse proceedings (continued).
establishment of 202
in neither party, effect of 204
Indian reservation, claim in 204
of either party in question 202
how acquired, in Nevada 615
privilege of acquiring full, in Alaska 21
Town authorities.
entry by, in trust for occupants of town site 274
Town site. See tit. **Town-site laws.**
adverse claims and suits between town-site and mineral claimants. See tits. **Adverse claims; Adverse proceedings.**
as to, generally 282
in Alaska Federal district court 284
in Wyoming 283
as to, in general 272
discovery of minerals in public land 272
locating claim on 33
"mine."
as to, in town site 277
future discovery of ore 279
indications of the existence of mineral 281
minerals which are known to exist 280
"valid mining claim or possession" 281
mode of establishing.
classes of mining districts distinguished 277
conformity to legal subdivisions 276
entry.
by town authorities in trust for occupants 274
in proportion to number of inhabitants 275
under preference 275
extension of limits of 274
filing plat of town site 273
future discovery of mineral 279
in Alaska 276
indications of existence of mineral 281
"judge of the county court," meaning of term 274
"mine" exempted from 277
preference 275
scripping 273
surveying reservation into lots 273
under Federal statute 273
"valid mining claim or possession" 281
on mineral lands. See tit. **Mineral lands.**
authorized 349
restrictions on 349
reservation of lots in 273
transferee of lands in town site 279

Town-site laws.
patent issued under the general 212
Transcripts.
from records, fees for 490
of capital stock of corporation, in Nevada 634
of mining claim. See tit. **Mines and mining claims.**
by corporation 220
of stock, security on, in Nevada, when 653
Transfer agencies.
in other states for California corporations..... 563
stock issued at 563
surrender of certificate on transfer 563
Transferees.
how to entitle themselves to notice of contest, etc..... 495
of lands in town site 279
Traveling expenses.
mileage in lieu of, for débris commission 384
Treasury stock.
not to be voted, in Nevada 652
Tree.
blazing at some distance from boundaries of claim 103
placing notice upon, at end of claim 101
Trend.
following beyond exterior lines, in Nevada 602
Trespasser.
possession of, sufficient.
for action in ejectment 6
for action in trespass 6
Trials.
in contest cases.....501-503
Triangle.
mining claim in shape of 246
Trustees.
not personally liable, in Nevada 637
of corporation, after dissolution, in Nevada.
as to, generally 665
powers of 666
parties to a grub-stake contract are, for each other 303
"Tumble-stuff."
meaning of 41
Tunnel.
in lieu of discovery-shaft, in Washington 697
land-office regulations respecting 412, 413
money expended on, credited as assessment-work 328
no right to, when 259
purpose of, through other claims, in Colorado 574
rights of owners of 326
will hold lode claim, in Colorado 577

Tunnel claims.
discovery of mineral in 74
extent, size, and shape of 92
failure to do assessment-work, effect of 143
length of, in Colorado 573
marking of, as to 99
must be recorded, in Colorado 573
right of way 573
right to tunnel through claims 573
ore extracted property of owners.
as to, generally 574
burden of proof 574
damages 574
purpose of tunnel, and inspection 574
Tunnel-owner. See tit. **Tunnel site.**
discovering vein in tunnel, rights of 57, 58
right of, to vein discovered in tunnel 57, 58
rights where third person extends into public domain and makes discovery 60
Tunnel right.
blind lodes or veins 608
boundary lines of, establishment, in Nevada..... 608
establishment of boundary lines of 608
located how, in Nevada 607
recording.
as to, generally 608
in Nevada 608
Tunnel site.
as to, in general 56
blind leads 60
certificate of location for posting on ground and for recordation, form of 765
claimant of, as between, and lode patentee, patent conclusive of what 215
discovery of mineral 57
extended tunnel of another into public domain, rights to discovery 60
"face of the tunnel," defined 56
"line of the tunnel," what is 56
location-notice of, for posting on the ground, and for recordation, form of 765
marking boundaries 58
right of owner of, and locator 58
right of tunnel-owner to vein discovered 57
size and extent of location 57
tunnel-owner discovering vein in tunnel, rights of 57

Tunnel-site owner.
adverse proceedings by 191
Unappropriated land.
discovery-shaft must be sunk on 89
Unappropriated mineral lands.
abandoned claims deemed, in Oregon 687
Underground discovery.
imperfect, gives claimant what rights 84
United States.
surrender to, of right to regulate débris 374
Uniting veins.
adverse proceedings necessary 271
apex as determining right 270
as to, generally 270
issue, how determined 270
rights of parties, in Colorado 574
Unsurveyed public lands. See tit. **Public lands.**
claims on, in Philippine Islands 397
location on application for patent 168
lode or vein on, description of 333
Utah.
affidavit. See tits. **Affidavit; Proof.**
of annual labor, form of 773
of work done, filing 695
boundaries, marking of 694
certificate of location for lode claim, form of 752
citizens of, may fell and remove timber from public domain .. 353
discovery-shaft 694
filing affidavit of work done 695
location, notice of, recording 694
marking boundaries 694
mining districts 694
notice of location, recording 694
placer location, form of 753
recording notice of location 694
salt-lands within 339
statute declaring mining a public use 286
work done, filing affidavit of 695
Vacancies in board of directors. See tit. **Corporations.**
in Nevada. See tit. **Nevada.**
as to, generally 633
by failure.
to elect 632
to qualify 632
Valid discovery. See tit. **Discovery.**
what constitutes 78

Valid location. See tit. **Location.**
as to what constitutes a ..... 26, 30, n.
necessity for 5
"Valid mining claim or possession."
meaning of, in town-site location law 281
Validating.
of articles of incorporation, in Nevada 662
Valuation.
of labor or work 136
Value.
basis for determining, in Nevada 615
of ore as damages 581
Vein or lode. See tits. **Apex; Crossing or intersecting veins or lodes; Following lode or vein on its dip; Uniting veins.**
abruptly terminating before reaching side line 255
blind, in tunnel right, in Nevada 608
cannot follow beyond limits of claim 231
continuity of. See tit. **Continuity.**
as to, generally 237
defined 61
test of continuity 238
cropping out of, not necessary to location 236
crossing end line and departing through side line 253
crossing or intersecting. See tit. **Crossing or intersecting veins or lodes.**
definition of 36, 39
departing and entering same side line 255
description of.
on surveyed lands 333
on unsurveyed lands 333
establishment of extralateral rights 259
existence of, issues touched 37
extralateral rights. See tit. **Extralateral rights.**
no right to tunnel 259
following on its course or strike 231
identity of 237
intersecting. See tit. **Crossing or intersecting veins or lodes.**
as to, generally 341
having apex outside of boundaries 258
length of mining claims along 324
lying along common side line 255
other than discovery-vein 257
patentee. See tit. **Patentee.**
rights of 260
placer locations do not include 227

Vein or lode (continued).
placer not invalid because it contains 46
right of tunnel-owner to 57
right to, conveyed by possession of surface of mining location 234
uniting. See tit. **Uniting veins.**
various definitions of 39
"vein."
definition of.....36, 39
synonymous with "lode" or "ledge"..... 36
within placer claim. See tits. **Lode claim; Placer claim.**
Veins or blind lodes.
in tunnel right, in Nevada 608
Verification. See tit. **Location-notice.**
Federal mining law silent as to 125
in adverse proceedings. See tit. **Adverse proceedings.**
where to be taken 207
in Montana 125
of affidavit.
as to, generally 340
in Philippine Islands 400
of certificate. See tit. **Certificate; Corporations.**
of location, in Montana 593
of lode location, in Oregon, form of 750
upon information and belief 126
Vested rights.
homestead subject to 342
patents subject to 342
pre-emptions subject to 342
to right of way for canals 342
to use of water for mining 342
Vote.
pledgor of stock may, in Nevada 652
right to, determined by stock-ledger, in Nevada..... 651
Voting-list.
of stockholders in Nevada corporation 650
Washington.
affidavit. See tits. **Affidavit; Proof.**
of annual assessment-work, form of 774
of location-work on placer claim, form of 757
amended certificate of location 697
assessment-work.
proof of.
as to, generally 697
effect of 698
road-building as 700
boundaries 696
certificate, amended, of location 697

Washington (continued).
cut in lieu of shaft 697
definition of term "lode" 697
discovery-shaft 696
effect of record as evidence 700
evidence, effect of record as 700
limitation of rule as to shafts 698
location. See tits. **Claims; Location.**
amended certificate of 697
notice of 696
of placer claims, how made 699
"lode," definition of term 697
mining claims and rules of mining district 696
mining districts, rules and regulations 700
notice for posting. See tit. **Posting.**
on ground of placer claim, form of 756
on lode claim, form of 754
notice of location. See tit. **Notice of location.**
as to, generally 696
of lode claim for recording, form of 755
placer claims, location of, how made 699
proof of annual assessment-work. See tit. **Assessment-work.**
as to, generally 697
effect of 698
form of 774
record, effect of, as evidence 700
relocation, how made 698
road-building as assessment-work 700
rules. See tit. **Miners' rules and regulations.**
and regulations of mining districts 700
as to shafts, limitation of 698
of mining districts 696
shaft. See tits. **Discovery-shaft; Shaft.**
cut or tunnel in lieu of 697
limitation of rule as to 698
tunnel in lieu of shaft 697
Waste-dump.
on adjacent land 28
Water. See tit. **Water rights.**
Water rights.
granted for mining purposes.
in forest reserves 354
regulations of 354
homesteads subject to vested 342
patents subject to vested 342, 401
pre-emptions subject to vested 342
protection of, vested, in Philippine Islands 401
vested right in, for mining purposes 342

Western states.
incorporating in, as to, generally 539
Width.
of lode claim. See tit. **Lode claim.**
in Colorado, exceptions 575
in North Dakota 683
in South Dakota 688
of mining claim, in Idaho 584
of tunnel claim, in Colorado 573
Wilful injury.
to works in hydraulic mining, penalty 379
Withdrawal.
effect of 226
Witnesses.
compulsory attendance in proceedings in district land-offices, etc. 523-530
Department of Interior circular respecting.
amendment to circular 526-530
as to, generally 523-526
form of subpœna 524
Words and phrases.
"abandonment," distinction between, and "forfeiture"..... 148
"along the vein," meaning of 42
"articles of incorporation," meaning of, as used in Nevada statute 672
"certificate of incorporation," meaning of, as used in Nevada statute 672
"contact," defined 41
"contiguous," meaning of, in application for patent 171
"country," meaning of 42
"country-rock," meaning of 42
"cross" and "intersect," not strictly synonymous..... 266
"débris," meaning of 41
"directors," meaning of, as used in Nevada statute 672
"face of the tunnel," defined 56
"forfeiture."
distinction between, and "abandonment" 118
not used in its common-law sense 8
"hydraulic mining," defined 373
"in place," meaning of 41, 42
"intersect" and "cross," not synonymous 266
"judge of the county court," meaning of, in town-site location law 274
"known" veins or lodes, not placer claims.....52, 53
meaning of term, not synonymous with "located vein".... 54
"lands valuable for minerals," as to..... 4

Words and phrases (continued).
"ledge," synonymous with "lode" or "vein" 36
"ledge-matter," defined 40
"line of the tunnel," defined 56
"located vein," not synonymous with "known vein" 54
"location."
defined 5
used interchangeably with "mining claim" 5
"lode."
definition of.
as to, generally 36, 39
as used in Washington 697
synonymous with "vein" or "ledge" 36
"mine," meaning of, in town-site location law 277
"mineral land," defined 3
"minerals," defined 2
"mines or mining claims," meaning of, in statutes imposing tax 1
"mining by the hydraulic process," defined 373
"mining claim" used interchangeably with "location" 5
"mining-ground," definition of 3, 4
"other valuable deposits."
as to, generally 228
limited in its meaning to what 230
term includes what 229
"principal office in this state," meaning of, as used in Nevada statute 672
"principal office," meaning of, as used in Nevada statute 672
"principal place of business," meaning of, as used in Nevada statute 672
"public lands," as to what are 18
"register's office," meaning of, as used in Nevada statute 672
"space of intersection," construction of 262
"stockholders," meaning of, as used in Nevada statute 672
"the contact," as to, generally 41
"trustees," meaning of, as used in Nevada statute 672
"tumble-stuff," meaning of 41
"unappropriated," definition of 26, 27
"unoccupied," definition of 26, 27
"valid mining claim or possession," in town-site location law 281
"valuable mineral deposits," as used in mining laws 4
"vein," synonymous with "lode" or "ledge" 36
definition of 36, 39
Work. See tits. **Annual labor; Assessment-work.**
affidavit of, performed 603
annual work, amount that must be done, in South Dakota 692
by whom to be done 139

Work (continued).
co-owners.
by. See tit. **Co-owners.**
charged with duty of performing, cannot claim forfeiture when 140
of claim not relieved from 140, 329
done outside of claim.
aggregate expenditure of labor or improvements..... 137
as to, generally 136
claims must be contiguous 139
excavation upon one of group 138
owner of several adjoining claims 137
several claims held in common 137
situation disclosed in most of decided cases..... 138
work on patented claim 138
excuse for not performing 139
failure to do necessary, effect of, on forfeiture 148
holding possession without, not sufficient 148
in a suit in support of an adverse claim 140
in Philippine Islands. See tit. **Philippine Islands.**
performance of, issuance of patent 140
protection of, in California 554
proof of 140
to be performed on placer claim, in Nevada 606
under plans in hydraulic mining, submission of 376
valuation of 136
Work done.
filing affidavit of, in Utah 695
Working.
in California. See tit. **California.**
Works.
wilful injury to, in hydraulic mining 379
Writing.
grub-stake contracts.
need not be in 300
to be in, in Oregon 686
reducing testimony to, fees for 489
Written notice. See tit. **Notice of location.**
posted on stake, sufficiency of 114
Wrongful acts. See tit. **Forfeiture.**
preventing completion of location does not work forfeiture... 147
Wyoming.
abandoned claims, relocation of 703
adverse claims and suits between town-site owners and mineral claimants in 283
affidavit of assessment-work done 706

Wyoming (continued).
affidavit of work done 706
amount of 704
assessment-work. See tit. **Assessment-work.**
effect of failure to do 706
may be regulated by mining district 705
on placer claim 704
upon contiguous claims 705
boundaries, marking 702
certificate of location of lode claim, form of 758
citizens of, may fell and remove timber from public domain.. 353
contiguous claims, assessment-work on 705
discovery-shaft. See tit. **Discovery-shaft.**
as to, generally 702
equivalent of 703
equivalent of discovery-shaft 703
location-certificate. See tit. **Location-certificate.**
of placer claim 703
recording 702
void when 703
lode claim, notice of 702
marking boundaries 702
mining district, regulation of assessment-work by 705
notice of location. See tit. **Notice of location.**
as to, generally 702
what to contain 704
placer claim. See tit. **Placer claim.**
assessment-work on. See "Assessment-work," this title.
location-certificate of 703
preliminary notice for posting, form of 758
proof of annual labor, form of 775
recording location-certificate 702
relocation of abandoned claims 703
requirement as to filing location after discovery 123

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